

United States
Circuit Court of Appeals
For the Ninth Circuit.

ARIZONA COPPER ESTATE, a Corporation,
Appellant,

vs.

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the District
of Arizona.

Filed

OCT 13 1915

F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

ARIZONA COPPER ESTATE, a Corporation,
Appellant,

vs.

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the District
of Arizona.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Abstract of Testimony and Certain Exhibits....	30
Amended Answer.....	21
Amendment to Bill, First.....	14
Amendment to Bill, Second.....	17
Amendment to Bill, Third.....	19
Assignment of Errors.....	87
Attorneys of Record, Names and Addresses of..	1
Bill, Plaintiffs'.....	1
Bond on Appeal.....	90
Certificate of Clerk U. S. District Court to Trans- cript of Record.....	96
Citation on Appeal (Original).....	98
Confirmation of Authority to Appear for Ari- zona Copper Estate, etc.....	95
Decree.....	63
Deposition of Phillip Keep Reynolds.....	49
EXHIBITS:	
Plaintiffs' Exhibit "A"—Deed, February 8, 1907, Syme et al., to Watts et al.....	67
Plaintiffs' Exhibit "B"—Deed, August 3, 1899, Mathews et al., to Arizona Copper Estate.....	72

EXHIBITS—Continued:

Plaintiffs' Exhibit "C"—Indenture, August 3, 1899, Arizona Copper Estate and Mathews et al.....	77
Plaintiffs' Exhibits "D-1" to "D-12"—Promissory Notes.....	61
Plaintiffs' Exhibit "S"—Affidavit of Stephen E. Dorsey.....	81
Plaintiffs' Exhibit No. 4—Excerpts From Petition for Rehearing.....	58
Defendants' Exhibit No. 5—Excerpts from Testimony of Dabney C. D. Davis, Jr...	60
First Amendment to Bill.....	14
Names and Addresses of Attorneys of Record..	1
Notice of Appeal and Demand to Join in Application for Appeal.....	84
Order Approving Abstract of Testimony and Exhibits.....	63
Order Extending to July 10, 1915, to File Record and Docket Appeal.....	100
Order Extending Time to September 4, 1915, to File Record and Docket Appeal.....	102
Order Extending Time to September 18, 1915, to File Record and Docket Appeal.....	104
Order Extending Time to September 28, 1915, to File Record and Docket Appeal.....	94
Petition for, and Order Allowing Appeal, etc...	85
Plaintiffs' Bill.....	1
Praecipe for Transcript of Record on Appeal..	91
Second Amendment to Bill.....	17

Index.	Page
Stipulation as to Abstract of Testimony and Exhibits.....	62
Stipulation as to the Amended Answer.....	27
Stipulation for First Amendment..	16
Stipulation Waiving Certain Proof.....	28
TESTIMONY ON BEHAIF OF PLAINTIFFS:	
DAVIS, Jr., DABNEY C. D.....	51
SYME, SAMUEL A. M.....	30
Cross-examination	40
Redirect Examination	43
Recross-Examination	44
Redirect Examination	44
Recross-Examination	44
Redirect Examination	45
Recross-examination	47
Third Amendment to Bill.....	90
Undertaking on Appeal.....	90

Names and Addresses of Attorneys of Record.

HARTWELL P. HEATH, New York, New York;

HERBERT NOBLE, New York, New York;

S. L. KINGAN, Tucson, Arizona,

Attorneys for Plaintiff.

G. H. BREVILLIER, New York, New York; BEN

C. HILL, Tucson, Arizona,

Attorneys for Defendant, Arizona Copper
Estate.

JOHN B. WRIGHT, Tucson, Arizona,

Attorney for Defendants Boyce. [2 *]

Plaintiffs' Bill.

*In the District Court of the United States in and for
the District of Arizona*

IN EQUITY—No. E-4. (Tucson.)

CORNELIUS C. WATTS, and DABNEY C. T.

DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, U. LAWRENCE

BOYCE, W. TRUXTON BOYCE, URIEL

WRIGHT BOYCE, and the Unknown Heirs,

if any, of U. L. BOYCE, Deceased,

Defendants.

To the Honorable, the Judge of the District Court of
the United States, in and for the District of
Arizona:

*Page-number appearing at foot of page of certified Transcript of
Record.

Cornelius C. Watts, a citizen of the State of West Virginia, residing at Charleston in that State and Dabney C. T. Davis, Jr., a citizen of the State of West Virginia, residing at Lewisburg, in that state, brings this their bill ~~of complaint~~ against the Arizona Copper Estate, an alleged corporation, alleged to have been organized, and to exist under the laws of Arizona; C. Lawrence Boyce, W. Truxton, Boyce, and Uriel Wright Boyce, citizens of the State of Delaware, residing in the County of New Castle in that state; and the unknown heirs, if any, of U. L. Boyce, deceased, who are understood to be citizens of the State of Virginia, residing in Clark County in that state, but whose post office address is unknown to the plaintiffs.

And thereupon your orators complain and say:

1. That by an act entitled "Act to Confirm Certain Private Land Claims in the Territory of New Mexico," approved June 21, 1860, the Congress of the United States, by the sixth section thereof, enacted: [3]

"That it shall be lawful for the heirs of Luis Maria Baca who make claim to the same tract of land as is claimed by the town of Las Vegas, to select instead of the land claimed by them, an equal quantity of vacant land, not mineral, in the Territory of New Mexico, to be located by them in square bodies, not exceeding five in number; and it shall be the duty of the Surveyor General of New Mexico to make survey and location of the land so selected by the said heirs of Baca when thereunto required by them, pro-

vided, however, that the right hereby granted shall continue in force for three years from the passage of this act, and no longer.”

2. That thereafter, on June 17, 1863, pursuant to said act, the heirs duly selected and located, by a description with reference to natural objects and by courses and distances as required by the General Land Office, the following described tract of land, to wit:

“Commencing at a point one mile and a half from the base of the Salero Mountain, in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point west 12 (twelve) miles, 36 (thirty-six) chains and 44 (forty-four) links; thence south 12 (twelve) miles, 36 (thirty-six) chains and 44 (forty-four) links; thence east 12 (twelve) miles, 36 (thirty-six) chains, and 44 (forty-four) links; and thence north 12 (twelve) miles, 36 (thirty-six) chains and 44 (forty-four) links, to the place of beginning, the said tract being then situated in that portion of New Mexico included by Act of Congress, approved February 24, 1863, in the Territory of Arizona, and which tract of land is now in the County of Santa Cruz, State of Arizona.”

3. That on June 17, 1863, an application was duly made on behalf of the heirs of Baca, to the Surveyor General of New Mexico, to have the land so selected and located by them, duly surveyed.

4. That on June 18, 1863, the said Surveyor General duly transmitted said application, with his ap-

proval thereof, to the Commissioner of the General Land Office of the United States, at Washington, D. C.

5. That on April 9, 1864, the said Commissioner of the General Land Office, duly approved such selection and location, and ordered the land therein described to be surveyed. [4]

6. That controversies arose between the officials of the land department and the claimants to said land, in regard, among other things, to the payment of the costs of said survey, which the said officials claimed the claimants were required by law, to deposit before the said survey should be made, and which claim the claimants denied.

7. That by reason of said controversies, the survey of said land was not made by the government until the year 1905, when the same was made by one Contzen, under a contract duly made with the Surveyor General of the Territory of Arizona, and the plat of such survey and the accompanying field notes were duly approved by the Surveyor General. on or about November 23, 1906, and forwarded to the General Land Office, where they were examined and approved.

8. That the Commissioner of the General Land Office claimed against the claimants' protest that the land department had jurisdiction at the time such survey was made to investigate and determine whether or not the character of the land selected and located, as aforesaid, by the heirs of Baca, were such as the act of June 21, 1860, authorized them to select and locate.

9. That final action by the Department of the Interior, in regard to the placing on file of the said Contzen Survey was not secured until December 5, 1908, and said decision was adverse to the claimants.

10. That thereupon an action was brought in the Supreme Court of the District of Columbia, by the then owners of said land, against James R. Garfield and Frederick Dennett, then respectively Secretary of the Interior and Commissioner of the General Land Office, to require the defendants, among other things, to place on file as muniment of claimants title, [5] and for future reference, as required by law, said Contzen survey, without any annotation, or other reference, to the alleged character of the land, and to restrain the defendants from proceeding to allow entries upon said land, as public lands of the United States.

11. That thereafter, on or about March 23, 1909, Richard A. Ballinger was substituted as defendant in the place and stead of James R. Garfield.

12. That on or about June 18, 1913, the Supreme Court of the District of Columbia, decided in favor of the plaintiffs in said suit, and ordered the said defendants to place such survey on file as muniment of plaintiffs' title and for future reference as required by law, and enjoined the defendants from further proceeding in regard to any of the entries upon said land as public land of the United States; which decision of said Supreme Court was, on appeal to the Court of Appeals for the District of Columbia, duly affirmed; and from said latter decision, an appeal was taken to the Supreme Court of the United States,

which unanimously affirmed the decision of the lower courts.

13. That on November 1, 1911, Walter L. Fisher was substituted as defendant in the place and stead of Richard A. Ballinger; on April 28, 1913, Franklin K. Lane was substituted as defendant in the place and stead of Walter L. Fisher; and October 16, 1913, Clay Tallman was substituted as defendant in the place and stead of Frederick Dennett.

14. That prior to August 3, 1899, Alexander F. Mathews and Samuel A. M. Syme, had succeeded, by mesne conveyances, to the title of the heirs of Baca, in and to said land.

15. That there appears of record in the office of [6] the County Recorder of Pima County, Arizona, at Book 31 of Deeds, of Real Estate, page 103, a deed to said land from the said Alexander F. Mathews and Samuel A. M. Syme, to the defendant Arizona Copper Estate, a copy of which deed is hereto attached as exhibit 1, and by reference made a part hereof.

16. That there also appears of record in the office of said Recorder in Book 15 of Mortgages, page 60, a reconveyance of said land by the defendant Arizona Copper Estate to the said Alexander F. Mathews and Samuel A. M. Syme, a copy of which reconveyance, is hereto attached as exhibit 2, and by reference made a part hereof.

17. That the deed, exhibit 1, and the reconveyance, exhibit 2, were made on the same day, that is August 3, 1899, and were recorded on the same date, and at the same hour, that is, at 9 o'clock A. M.,

on August 12, 1899, and were intended as a conditional sale, and were made to enable Boyce and his associates to raise in advance on the security of the loan, money with which to purchase the land for \$100,000, evidenced by the notes mentioned in the reconveyance, with the understanding that the failure to do so in time to pay the notes, according to their *tener* and effect, would leave the title in the said Mathews and Syme, just as it was immediately prior to the making of the deed exhibit 1, and avoid the transaction so far as the said Arizona Copper Estate, and Boyce and his associates were concerned.

18. That in the deed, exhibit 1, and in the reconveyance, exhibit 2, the Arizona Copper Estate is described as a corporation organized and existing under the laws of Arizona. The records in the offices of the County Recorders of Pima and Santa Cruz Counties have been examined and [7] no record of such a corporation found, and the corporation commissioner of Arizona, states that it has no record of any such corporation. Upon information and belief that no such corporation existed at the time said conveyances were made.

That the alleged corporation never did anything in connection with said land, save as appears by exhibit 1, and 2 and that it has expended no moneys towards the development of the said land; and that it has done no business since the execution of the conveyances, or at all; that it never had, and has now no assets; and that it has never entered into possession of the said land, or exercised or attempted to exercise any rights of ownership over the same.

19. That the grantors in the deed, exhibit 1, were not, nor was either of them in any way, obligated to, nor did they, or either of them, owe any money or moneys to the grantee therein, or to the stockholders or promoters thereof, or any of them, prior to, or at the time of, the execution of the deed, exhibit 1, or the reconveyance, exhibit 2, nor was there any transaction in connection with said exhibits, other than as stated in paragraph 17 hereof.

20. That the reconveyance, exhibit 2, contains the following recital:

Whereas the party of the first part has executed certain promissory notes, aggregating the sum of One Hundred ~~Thousand~~ Dollars (\$100,000.), Dollars, payable according to the terms and tenor thereof, to wit: Three notes for \$4824.20; three notes for \$5351.60; three notes for \$5824.20; and three notes for \$4000, each; each of said sets of notes falling due respectively on February 15, 1900, July 15, 1900, and January 15, 1901; also one note for \$9648.40, one for \$10,703.20, and one for \$11648.40; and one for \$8000, all of said notes being ~~due and~~ payable on the 15th day of July, 1901. All the above described notes having been executed to Alexander F. Mathews, S. A. M. Syme, U. S. Boyce, and Alexander F. Mathews, Trustee, respectively, as will appear fully on the face of said notes." [8]

and the following proviso:

"Provided always that if said notes are paid according to their tenor and effect then these

presents shall become void, and the estate hereby granted shall cease, determine and be void, otherwise to remain in full force and effect.”

21. That the notes mentioned in paragraph 20 hereof, were given for the purchase price of the said land by the Arizona Copper Estate; that the said notes were not paid according to their tenor, or effect, nor at all, nor has any part of any of the said notes been paid, nor any interest, nor any portion of the interest thereon, and that the plaintiffs are now the holders and owners of said notes to an amount in excess of seventy-five thousand dollars.

22. Upon information and belief that at the time of his death, U. L. Boyce, held the remainder of said notes; and that the defendants, U. Lawrence Boyce, W. Truxton Boyce, Uriel Wright Boyce, and the defendants who are sued as the “unknown heirs, if any, of U. L. Boyce, deceased,” are the legal representatives and heirs at law of said U. L. Boyce.

23. Upon information and belief that the said U. L. Boyce received the notes which he held, as commission, under the agreement that he would procure a purchaser, ready, willing and able to purchase the said land, and that the said U. L. Boyce gave no consideration for the notes which he held.

24. Upon information and belief that no consideration was paid by the Arizona Copper Estate for the conveyance to it by Alexander F. Mathews, and Samuel A. M. Syme, of the said land, and no act was done by it in furtherance thereof, other than the delivery of said notes.

25. That the reconveyance, exhibit 2, remains in

full force and effect as a conveyance to the said Mathews [9] and Syme, of the said land, on account of the failure of the Arizona Copper Estate, to pay the said notes, when and as they become due: the said U. L. Boyce and his associates and the Arizona Copper Estate thereby failing to carry out the agreement in furtherance of which the deed, exhibit 1, and the reconveyance, exhibit 2, were made, namely, a conditional sale, to be effective as such, if the notes were paid, and to be void in case the notes were not paid.

26. Upon information and belief, that the Arizona Copper Estate never had any funds, money, or other assets, from which to pay the said notes, and that the Arizona Copper Estate was never an actual corporation, but was merely a tentatively proposed corporation, the organization of which was never completed.

27. Upon information and belief, that the defendants U. Lawrence Boyce, W. Truxton Boyce, and Uriel Wright Boyce are not now, and never have been, citizens or residents of the State of Arizona, but are now, and have been, for several years past, residents and citizens of the State of Delaware.

28. That the names and addresses of the defendants who are described as the "unknown heirs, if any, of U. L. Boyce, deceased," are unknown to the plaintiffs. Upon information and belief the plaintiffs allege that such unknown heirs, if any, are not residents or citizens of the State of Arizona, but plaintiffs believe that if there are any such, they are citizens of the State of Virginia, residing in the County

of Clark in that state.

29. That by mesne conveyances, the plaintiffs have become and are now, the owners of the said land, and are in possession of the same; that the said deed, exhibit 1, and [10] the reconveyance exhibit 2, constitute a cloud upon the plaintiffs' title; and that the plaintiffs, as successors in title of the said Mathews and Syme, are entitled to have any rights of the Arizona Copper Estate, and the defendants, Boyce, and any person or persons claiming under it, or them, foreclosed.

30. That the plaintiffs are not now, and have never been residents or citizens of the State of Arizona, nor has either of them ever been such resident or citizen. They and each of them are now, and have been for twenty years last past, continuously, citizens of the State of West Virginia, residing respectively, the plaintiff, Cornelius C. Watts, at Charleston, West Virginia, and the plaintiff, Dabney C. T. Davis, Jr., at Lewisburg, West Virginia.

31. That the value of the land to which this suit relates is upwards of \$100,000, and the value of the plaintiffs' interest therein, is upwards of \$100,000.

WHEREFORE, the plaintiffs pray judgment:

1. That the conveyance from Mathews and Syme to the Arizona Copper Estate be declared a nullity; or if it be found that the Arizona Copper Estate was a corporation, that it be decreed that the notes described in the conveyance from the Arizona Copper Estate to the said Mathews and Syme, exhibit 2, have never, nor has any part of them been paid.

2. That it be decreed that the conveyance from

the Arizona Copper Estate to the said Mathews and Syme, exhibit 2, was a deed in fee with a condition subsequent upon the happening of which the conveyance would be void.

3. That the subsequent condition, namely, the payment of the notes, never happened, and that the conveyance remains in full force and effect, as a conveyance in fee to [11] the said Mathews and said Syme, of the land therein described; and that the defendants have not, nor have any of them, any interest in the said lands.

4. That it be decreed that a copy of this decree be filed and recorded in the office of the County Recorder of Santa Cruz County, in the State of Arizona.

5. To the end that the defendants may, if they can, show why your orators should not have the relief hereby prayed and may full, true and perfect answer make, according to the best of their knowledge, remembrance, information and belief, to the several matters hereinbefore averred and set forth, as fully and particularly as if the same were herein repeated, paragraph for paragraph, and they were hereunto severally and specifically interrogated (but not under oath, an answer under oath being hereby expressly waived) may it please your Honor to grant unto your orators a writ of subpoena ad respondendum, issued out of and under the seal of this Honorable Court, directed to the defendant, Arizona Copper Estate, U. Lawrence Boyce, W. Truxton Boyce, Uriel Wright Boyce, and the unknown heirs, if any, of U. L. Boyce, deceased, commanding them to

be and appear and make answer unto this bill of complaint, and perform and abide by such order and decree herein, as to this Court may seem to be required by the principles of equity and good conscience.

6. That your orators may have such other, further and general relief in the premises as equity and the nature of the circumstances of the case may require.

S. L. KINGAN,

Solicitor for Plaintiffs.

HARTWELL P. HEATH,

Of Counsel. [12]

State of Arizona,

County of Pima,—ss.

Hartwell P. Heath, being duly sworn says: That he is one of the attorneys for the plaintiffs named in the foregoing complaint; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

HARTWELL P. HEATH.

Subscribed and sworn to before me, this 23d day of June, 1914.

[Seal]

RENA NORTON.

Notary Public.

My commission expires February 7, 1918.

[Endorsements]: E-4. (Tucson). United States District Court, District of Arizona. Cor-

nelius C. Watts and Dabney C. T. Davis, Jr., Plaintiffs, vs. Arizona Copper Estate, and Others, Defendants. Bill of Complaint. Filed June 23, A. D., 1914. At — A. M. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk. [13]

First Amendment to Bill.

*In the District Court of the United States in and for
the District of Arizona.*

IN EQUITY—No. E-4. (Tucson.)

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. TRUXTON BOYCE, URIEL
WRIGHT BOYCE, and the Unknown Heirs,
if any, of U. L. BOYCE, Deceased,
Defendants.

Now come the plaintiffs and amend their bill in the following manner:

Substitute the following paragraph for bankruptcy 18 of said bill:

That in the deed, exhibit 1, and in the reconveyance, exhibit 2, the Arizona Copper Estate is described as a corporation organized and existing under the laws of Arizona. The records in the offices of the County Recorders of Pima and Santa Cruz Counties have been examined and no record of such a corporation found and the corporation commis-

sion of Arizona states that it has no record of any such corporation. Upon information and belief that no such corporation existed in law or fact at the time said conveyances were made, or at any time or at all.

That the alleged corporation never did anything in connection with said land save as appears by exhibits 1 and 2; that it has expended no moneys toward the development of the said land; that it has done no business since the execution of the conveyances or at all; that it never had and now has no assets; that it has never entered into possession of the said land or exercised or attempted to exercise any rights of ownership over the same.

S. L. KINGAN,
Solicitor for Plaintiffs.

State of Arizona,
County of Pima,—ss.

S. L. Kingan being duly sworn says that he is one of the attorneys for the plaintiffs named in the foregoing [14] amendment to bill; that he has read the same and knows the contents thereof and that the same is true to the best of his information and belief.

S.L.KINGAN,

Subscribed and sworn to before me this 4th day of September, 1914.

[Seal]

R. W. LANGWORTHY,

Notary Public.

My commission expires Feb. 19, 1916.

[Endorsements]: No. E-4. In the District Court of the United States, District of Arizona. Corne-

lius C. Watts and Dabney C. T. Davis, Jr., Plaintiffs,
vs. Arizona Copper Estate et al., Defendants.
Amendment to Plaintiffs' Bill. Filed Sep. 4, 1914,
at — A. M. George W. Lewis, Clerk. By Effie D.
Botts, Deputy Clerk. [15] t

*In the District Court of the United States in and for
the District of Arizona.*

IN EQUITY—No. E-4. (Tucson.)

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. TRUXTON BOYCE, URIEL
WRIGHT BOYCE, and the Unknown Heirs,
if any, of U. L. BOYCE, Deceased,
Defendants.

Stipulation for First Amendment.

It is hereby stipulated that the plaintiffs may
amend their bill in the above-entitled case in ac-
cordance with the amendments hereto attached.

Dated this 4th day of September, 1914.

BEN. C. HILL,

Attorney for Arizona Copper Estate.

JOHN B. WRIGHT,

Attorney for U. Lawrence Boyce, et al.

[Endorsements]: No. E-4. In the District Court
of the United States, District of Arizona. Cor-
nelius C. Watts and Dabney C. T. Davis, Jr., vs.

Arizona Copper Estate, et al., Defendants. Amendment to Plaintiffs' Bill. Filed Sep. 4, A. D., 1914, at — A. M. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk. [16]

*In the District Court of the United States in and for
the District of Arizona.*

E-4. (Tucson.)

CORNELIUS C. WATTS, et al.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, et al.,

Defendants.

Second Amendment to Bill.

The Plaintiffs make the following amendment to the bill of complaint herein:

Strike out paragraph 29 of the complaint herein and substitute therefor the following:

“29. On or about February 8, 1907, the said Samuel A. M. Syme and the heirs, devisees and legal representatives of the said Alexander F. Mathews, deceased, sold and conveyed the said land to the plaintiffs by deed duly recorded in the county of Santa Cruz, Arizona, in Book 7 of Deeds of Real Estate at page 546; or if the instrument, exhibit 2 attached hereto, be held to be a deed of trust the said Samuel A. M. Syme as surviving trustee sold and conveyed the said land to plaintiffs under the power of sale given him in exhibit 2 by the said deed of February 8, 1907. Ever since such conveyance of

February 8, 1907, plaintiffs have been and now are the owners of the said land and in the possession thereof at the commencement of this action; that the instruments, exhibit 1 and exhibit 2, attached hereto constitute a cloud on plaintiffs' title; and that plaintiffs are entitled to have any rights of the Arizona Copper Estate and the defendants Boyce and any person or persons claiming under it or them foreclosed.'" [17]

WHEREFORE plaintiffs pray that they may have the relief demanded in the complaint herein.

HARTWELL P. HEATH,
Solicitor for Plaintiffs.

Dated February 19, 1915.

State of New York,
County of New York,—ss.

Hartwell P. Heath, being first duly sworn says that he is one of the solicitors for the plaintiffs herein; that he has read the foregoing amendment to the complaint and knows the contents thereof; and that the same is true as he verily believes.

HARTWELL P. HEATH,

Subscribed and sworn to before me this 19th day of February, 1915.

FREDERICK W. MARQUAND,
Notary Public Kings County.

Certificate filed in N. Y. County #78.

The undersigned hereby consent to the filing of the foregoing amendment to the complaint on condition that the pleadings of the defendants heretofore made be held to apply thereto, and that they

be not required to file any additional pleadings.

BEN C. HILL,

Solicitor for Defendant Arizona Copper Estate.

JOHN B. WRIGHT,

Solicitor for Defendants Boyce.

[Endorsements]: In the District Court of the United States, District of Arizona. Cornelius C. Watts, et al., Plaintiffs, vs. Arizona Copper Estate et al., Defendants. E-4 (Tucson.) Amendment to Bill. Filed Mar. 6, A. D., 1915, at — A. M. George W. Lewis, Clerk. By S. D. Gromer, Deputy Clerk.

[18]

*In the District Court of the United States in and for
the District of Arizona.*

IN EQUITY E-4. (Tucson.)

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, et al.,

Defendants.

Third Amendment to Bill.

The plaintiffs make the following amendment to the bill of complaint herein as amended:—

Strike out the words “The holders and owners” in the sixth and seventh lines of paragraph 21 of said complaint on page 7 thereof and insert instead thereof the words “in the possession” so that the same shall read when amended as follows:

“21. That the notes mentioned in paragraph 20 hereof were given for the purchase price of the said land by the Arizona Copper Estate; that the said notes were not paid according to their tenor or effect or at all, nor has any part of said notes been paid, nor any interest nor any part of the interest thereon; and that the plaintiffs are now in the possession of said notes to an amount in excess of Seventy-five Thousand Dollars.”

WHEREFORE the plaintiffs pray that they may have the relief demanded in the complaint herein.

HARTWELL P. HEATH,
Solicitor for Plaintiffs.

Dated, March 25, 1915.

[Endorsements]: In the District Court of the United States for the District of Arizona. Cornelius C. Watts et al., Plaintiffs, vs. Arizona Copper Estate et al., Defendants, Plaintiffs' Amended Bill of Complaint. Filed March 25, 1915. George W. Lewis, Clerk. [19]

*In the District Court of the United States in and for
the District of Arizona.*

IN EQUITY—No. E-4. (Tucson.)

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS,

Plaintiffs,

against

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. TRUXTON BOYCE, URIEL
WRIGHT BOYCE, and the Unknown Heirs,
if any, of U. L. BOYCE, Deceased,
Defendants.

Amended Answer.

NOW comes the above-named The Arizona Copper Estate, a corporation duly organized and existing under the laws of the State of Arizona, by Ben C. Hill, its solicitor, and makes the following amended answer to the Bill herein:

First. This defendant alleges that more than thirteen years have passed since the last of said notes became due and payable, and that more than fifteen years have passed since said deed to it and said mortgage by it were respectively executed, and that no action or proceeding at law or in equity or otherwise has ever been begun, taken, or instituted by the plaintiffs herein, or either of them, or by said Mathews and Syme, or either of them, or by any person claiming by, from, through, or under them, or either of them, or by any owner or holder of any note secured by said mortgage, against this defendant for

any of the relief prayed for in the Bill, or for the payment of said notes or any of them or for the foreclosure of said mortgage, or for the sale of said property in accordance with the terms of said mortgage, and that any and all rights and remedies of the plaintiffs herein are now barred by their gross laches, and by every [20] statute or rule of limitation of the United States of America, and of the State of Arizona, and of the former Territory of Arizona.

Second: Answering the paragraph or section of said Bill marked "7," it denies upon information and belief that the delay in making the survey was due to any controversy with the United States as to the land described in the section or paragraph of the Bill marked "2," or because of any dispute as to who should pay for said survey; and this defendant alleges, upon information and belief, that between April, 1866 and June, 1899, the predecessors in interest of the plaintiffs herein were endeavoring to secure from the Land Department of the United States an approval of the location of another tract of land in lieu of the land described in the paragraph or section of the Bill marked "2."

Third. Answering the paragraph or section of the Bill marked "8," it denies upon information and belief each and every allegation therein contained, except that it admits that after the making of the survey in 1905, the Land Department of the United States illegally and without authority, claimed jurisdiction to determine whether the land, selected or located as set forth in the paragraph or section of

the Bill marked "2," was a proper selection because of the report made by the Surveyor General of Arizona in November, 1906.

Fourth. Answering the paragraph or section of the Bill marked "9," it denies upon information and belief each and every allegation therein contained.

Fifth. Answering the paragraph or section of the Bill marked "10," it denies upon information and belief that the plaintiffs in said action were the owners of said land described in paragraph or section of the Bill marked "2," and [21] further alleges that it was not a party to said action in any way.

Sixth. Answering the paragraph or section of the Bill marked "14," it admits that said Alexander F. Mathews and Samuel A. M. Syme had prior to August 3, 1899, succeeded by mesne conveyances to interest conveyed to Christopher E. Hawley by John S. Watts, under a certain deed dated January 8, 1870, recorded in the office of the recorder of Pima County, Arizona, on May 9, 1885, in Liber 13 of Deeds of Real Estate, page 66, conveying by metes and bounds a tract of land, a small part of which was included within the location of Baca Float No. 3 as located on June 17, 1863, and this defendant avers that it is advised by its solicitor and verily believes that the construction of said deed and as to whether or not said deed covered the interest of the grantor in the rest of Baca Float No. 3, as located on June 17, 1863, is a question of law to be determined by this Court. In all other respects this defendant, on information and belief, denies each and every allegation in said paragraph contained.

Seventh. Answering the paragraph of section of the Bill marked "15," it avers that said deed has also been duly recorded in the office of the recorder of Santa Cruz County, Arizona.

Eighth. Answering the paragraph or section of the Bill marked "16," it avers that said instrument is and was intended to be a purchase money mortgage from this defendant to said Alexander F. Mathews and Samuel A. M. Syme, as Trustees for the holders of the notes specified in said mortgage; and on information and belief, it denies that said exhibit 2 is a true copy of said instrument.

Ninth. Answering the paragraph or section of the Bill [22] marked "17," on information and belief this defendant denies each and every allegation therein contained, except that it admits that said deed and said reconveyance by way of mortgage were made and recorded on the same date. It avers upon information and belief that if any such agreement was made, it was not evidenced in writing, signed by this defendant, as required by law.

Tenth. Answering the paragraph or section of the Bill marked "18," this defendant alleges that it is a corporation duly organized and existing under the laws of the Territory (now State) of Arizona and that it was such a corporation and was so duly organized and existing on said August 3, 1899, and for some time prior thereto. This defendant avers that at the time of the commencement of this action, it had assets, and that prior thereto it had made efforts to dispose of said land, and had done business in connection therewith.

Eleventh. Answering the paragraph or section of the Bill marked "19," it reiterates the averments and denials hereinbefore contained and set forth in this answer.

Twelfth. Answering the paragraph or section of the Bill marked "21," it avers that it is without knowledge, information or belief as to how many of said notes are held or owned by the plaintiffs herein or either of them; and it denies upon information and belief that said notes constituted the entire purchase price.

Thirteenth. Answering the paragraph or section of the Bill marked "22," it avers that it is without knowledge, information or belief as to all or any of the matters therein contained.

Fourteenth. Answering the paragraph or section of the Bill marked "23," it avers that it is without knowledge, information [23] or belief as to all or any of the matters therein contained.

Fifteenth. Answering the paragraph or section of the Bill marked "24," on information and belief, this defendant denies each and every allegation therein contained.

Sixteenth. Answering the paragraph or section of the Bill marked "25," on information and belief, this defendant denies each and every allegation therein contained.

Seventeenth. Answering the paragraph or section of the Bill marked "26," on information and belief, this defendant denies each and every allegation therein contained.

Eighteenth. Answering the paragraph or section

of the Bill marked "27," this defendant avers that it is without knowledge, information or belief, as to all or any of the matters therein alleged.

Nineteenth. Answering the paragraph or section of the Bill marked "28," this defendant avers that it is without knowledge, information or belief as to all or any of the matters therein contained.

Twentieth. Answering the paragraph or section of the Bill marked "29," upon information and belief, it denies each and every allegation therein contained.

Twenty-first. Answering the paragraph or section of the Bill marked "31," on information and belief this defendant denies that the value of the plaintiffs' interest in said land is upwards of one hundred thousand (\$100,000) dollars, or that it amounts to any sum whatsoever.

Twenty-second. Further answering the Bill herein, this defendant alleges, upon information and belief, that since the filing of the Bill herein, it has duly and for value quitclaimed and conveyed to A. M. Fowler the lands described or [24] referred to in said Bill.

WHEREFORE, this defendant demands judgment dismissing the Bill with costs, and granting to this defendant such other and further relief as to the Court may seem just.

THE ARIZONA COPPER ESTATE.

By BEN C. HILL,

Its Solicitor.

[Endorsements]: United States District Court,
District of Arizona. In Equity No. E-4, Tucson.

Cornelius C. Watts et al., Plaintiffs, Against Arizona Copper Estate et al., Defendants. (Original). Amended Answer of the Arizona Copper Estate. Ben C. Hill, Solicitor for The Arizona Copper Estate. Filed Sept. 2, A. D., 1914, at — A. M. George W. Lewis, Clerk. By S. D. Gromer, Deputy Clerk.
[25]

*In the District Court of the United States for the
District of Arizona.*

IN EQUITY E-4. (Tucson).

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, et al,
Defendants.

Stipulation as to the Amended Answer.

It is stipulated that the amended answer of the defendant, Arizona Copper Estate, filed herein on September 2d, 1914, stand and be taken as its answer to the Bill herein as amended, with the same force and effect as if said instrument had been filed and served as the answer to the Bill herein as amended.

S. L. KINGAN,

Solicitor for Plaintiff.

JOHN B. WRIGHT,

Solicitor for U. S. Boyce et al.

BEN C. HILL,

Solicitor for Arizona Copper Estate.

[Endorsements]: In the District Court of the United States, District of Arizona. Cornelius C. Watts and Dabney C. T. Davis, Jr., Plaintiffs, vs. Arizona Copper Estate et al., Defendants. In Equity E-4. (Tucson). Stipulation. Filed Sept. 22, A. D. 1914, at — A. M. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk. [26]

Stipulation Waiving Certain Proof.

*District Court of the United States District of
Arizona.*

E-4. (Tucson).

CORNELIUS C. WATTS, et al.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, et al.,

Defendants.

It is hereby conceded for the purpose of the above case that the following statement of facts is true and that any party to the above case may introduce the same as proof of the same.

Alexander F. Mathews was born on or about December —, 1838, at Lewisburg, W. Va., and was married in 1866 at Christinasburg, W. Va., to Laura Gardner; and died at a hospital in Philadelphia, Pa., on or about December 10, 1907. He was throughout his life a resident of Lewisburg, W. Va. He was survived by his widow Laura G. Mathews and the following adult children, Mason Mathews, Charles G. Mathews, Elizabeth P. Mathews, and Henry

Mason Mathews. He left no adopted child or children, or the issue of any adopted child or children, or the issue of any deceased child. He was married only once, and his marriage was dissolved only by his death.

Samuel A. M. Syme was married on or about December 13, 1866, to Mary Maxwell at Tappahannock, Va., and his said wife died at Washington, D. C., on or about March 10, 1910. At the time of his marriage said Syme was and ever since he *has a* resident of the State of West Virginia or the District of Columbia. The only children of the marriage are Conrad [27] H. Syme, William Henry Syme, James C. Syme, Mary Maxwell Syme, and Eliza S. Whitehead. Mr. Syme was married only once and his marriage was dissolved only by the death of his wife as aforesaid.

Dated December 21, 1914.

HARTWELL P. HEATH,

Sol'r for Plffs.

JOHN B. WRIGHT,

Solicitor for Defendants Boyce et al.

BEN C. HILL,

Solicitor for Arizona Copper Estate.

[Endorsements]: District Court of the United States, District of Arizona. Cornelius C. Watts et al., Plaintiffs, vs. Arizona Copper Estate, et al., E-4 Tucson. Stipulation in regard to Mathews and Syme. Filed Feb. 20, A. D., 1915. George W. Lewis Clerk. By S. D. Gromer, Deputy Clerk.

*In the District Court of the United States Southern
District of Arizona.*

No. E-4.

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. THURSTON BOYCE, URIEL
BOYCE, and the Unknown Heirs, if any, of
U. LAWRENCE BOYCE, Deceased,

Defendants.

Abstract of Testimony and Certain Exhibits.

Trial had on March 25, 26, 1915, before Hon. WILLIAM H. SAWTELLE, Judge of the United States District Court of Arizona, at the courtroom of said Court, Tucson, Arizona, without a jury.

APPEARANCES: Herbert Noble, S. L. Kingan and H. P. Heath, Esqrs., for plaintiffs.

G. H. Brevillier and Ben C. Hill, Esqrs., for Arizona Copper Estate.

The other defendants answered but defaulted at the trial, and a decree *pro confesso* was entered as to them.

[Testimony of Samuel A. M. Syme, for Plaintiffs.]

SAMUEL A. M. SYME, called as a witness on behalf of the plaintiffs, was examined under oath and testified as follows:

I reside at Washington, D. C., and will be seventy-

(Testimony of Samuel A. M. Syme.)

seven the eighth of April. I was in the Confederate Army. I knew Alexander F. Mathews since his childhood. I recall perfectly the transaction in New York occurring on or about August 3, 1899, between myself, Capt. Mathews and ex-Senator Dorsey; Philip K. Reynolds, Col. Boyce, a stenographer [29] and James Simmons being also present. The transaction related to Baca Float No. 3 and nothing else. Previously thereto Senator Dorsey and I had had transactions for several months, I should say sixty or ninety days probably, in respect to that matter, and before my arrival at New York I had arrived at an agreement with him. At the time of the meeting in New York the various parties above named were present and we were in consultation with each other and we all agreed upon that agreement whose terms were restated so that we all heard what was said.

Q. Now, will you tell the Court, Colonel, what your agreement was with Senator Dorsey?

Mr. BREVILLIER.—If the Court please, I object to the evidence as incompetent, immaterial and irrelevant, and inadmissible to vary, modify or contradict a written instrument. The plaintiffs in their opening have specifically stated that this is an action to quiet title, and as I recall Mr. Heath, to quiet title and nothing else. It is not an action to reform an instrument or to correct in any way; the papers that were admitted and signed in the transaction are a part of the bill, and parol evidence at this late day to alter, vary, modify or contradict those papers in

(Testimony of Samuel A. M. Syme.)

any manner is inadmissible not only under any theory of law but under the pleadings in this action.

The COURT.—I will overrule the objection.

Mr. BREVILLIER.—I will take an exception.

To which ruling of the Court, the defendant by its counsel then and there duly excepted.

My agreement with Senator Dorsey was this: We first talked about an option and we couldn't agree on that because he wanted a deed, because he said that he thought he could use that better. I had made the proposition that I would sell him that property for \$5,000 cash to me personally for [30] procuring the deed, and he wanted to give me a deed in exchange at the same time.

Mr. NOBLE.—Now, just tell us what the substance was, of what was said by you to Senator Dorsey, by Senator Dorsey to you and by each of you to each other, which constituted what you have called the agreement, the conversations which went into what you called the agreement.

Mr. BREVILLIER.—I renew my objection, and I suppose there will be the same ruling.

The COURT.—Yes, the same ruling.

Mr. BREVILLIER.—And I take an exception.

To which ruling of the Court, the defendant by its counsel then and there duly excepted.

A. Senator Dorsey wanted the property: I told him that I would sell him that property for \$100,000. He was to pay me \$5,000 personally in cash, and \$100,000 for the property: And then he replied that he would consent to the agreement if I would give

(Testimony of Samuel A. M. Syme.)

him a deed. I objected to the deed to some extent, and then he explained to me that the deed would be in effect of such a character that the property would be held by us and the title in us, and not go out of us, and if the notes weren't paid the whole property would be in us still, and everything would be void, notes and all.

So far as I can recollect that is what Senator Dorsey and I said to each other. He was to pay me \$5,000 in money to procure the deed from Capt. Alexander F. Mathews and myself. Capt. Mathews was a lifetime friend of mine, and a well-known lawyer and the president of a bank in Lewisburg, of which he was the originator and the largest stockholder. Senator Dorsey was to pay \$100,000 in notes for the property.

Q. Now what was said in the agreement between you and Dorsey as to what was to happen in case these notes weren't paid on their due dates?

Mr. BREVILLIER.—If the Court please, I object upon the [31] ground that all the negotiations between the parties are merged, confessedly merged in the instrument in writing about which there is no apparent ambiguity, and that the testimony of the witness is inadmissible to impart any legal effect to it other than that imparted by the words of the instrument.

The COURT.—The objection is overruled.

Mr. BREVILLIER.— I except.

To which ruling of the Court, the defendant by its counsel then and there duly excepted.

(Testimony of Samuel A. M. Syme.)

A. If the notes weren't paid—all the notes weren't paid, the property was to remain in us and the notes were to become void and the whole thing wiped out.

As I said before, Dorsey wanted that property and he was very frank and told me he wanted it more than I wanted to sell it. He wanted it and I knew he wanted it. I wanted to sell it, but before we could not agree upon any terms. And this proposition was made by me or by him, I think by me, that I would do this; procure deeds to the property, don't you see, if he would pay me \$5,000 for procuring that deed, and then give me a deed, or something of the same character, that would leave the title in us unless every note was paid.

The \$5,000 was not to be a part of the purchase price but was to come to me personally. He was to pay me \$5,000 for giving him an option for a certain period.

The meeting on August 3, 1899, was at Senator Dorsey's office, 11 Broadway, New York City, in the suite of the American Exploration Company. Capt. Mathews and I went over from Washington for the meeting. En route I told Capt. Mathews of my agreement with Senator Dorsey. I had known Col. Boyce for a number of years. He had nothing to do with the agreement with Senator Dorsey, but had something before to do with trying to make an agreement. The terms of my agreement with Senator Dorsey were restated at Senator [32] Dorsey's office on August 3, 1899, in the presence of Capt. Mathews, Senator Dorsey, Philip K. Reynolds,

(Testimony of Samuel A. M. Syme.)

James Simmons and a stenographer, and we agreed upon my agreement with Senator Dorsey. In substance it was said among all of us, you know, that if all of the notes weren't paid everything became void, the notes and all, and the thing passed off and we stood the original grantors, Mathews and myself, holding the title. My dealings were entirely with Senator Dorsey and I made my agreement with Senator Dorsey. And Dorsey conducted the entire transaction *vis-a-vis*. me and Captain Mathews. There was nobody else. The papers that were executed on that day were prepared by Capt. Mathews. I think the paper now handed me (Plaintiffs' Exhibit "B") is a copy of the paper that was executed on that date. The paper now handed me (Plaintiffs' Exhibit "C") is the original of the paper that was executed that day by the Arizona Copper Estate to Capt. Mathews and myself. Both these papers were executed and delivered simultaneously.

A discussion then arose during the trial as to whether or not the defendant, Arizona Copper Estate, was properly in Court.

The COURT.—I do not know but what their motion to require you to show that you are here representing this corporation should have been considered by the Court, the question of whether or not this is *res adjudicata* in the event of a judgment. I always assume that counsel practicing in this court are properly here and representing the plaintiff or the defendant, as the case may be, for whom they appear. Now, when they are representing a corporation, and

(Testimony of Samuel A. M. Syme.)

when, as in this case, it is shown that that corporation has been inactive, has not been doing business for the last ten or fifteen years, and the question is raised at any time during the progress of the trial as to whether or not they are properly in court, then I think it is the duty of [33] the Court to satisfy itself on that point—not a matter that reflects upon counsel in the case, but in order to determine whether the Court has jurisdiction of the corporation. There is a peculiar situation here in Arizona. Until recently the corporation commission of Arizona was not in existence. Of course, not until after statehood. This corporation was formed a good many years ago, and the corporation commission have no record, it appears, of this corporation, and therefore, there might be some question as to whether or not the service upon that commission could be held service upon the corporation, and I can readily understand why counsel should feel, in view of all the conditions, that it should be shown that you gentlemen have been employed by that corporation to appear in this case.

Mr. HILL.—I have a telegram here which is signed by the Arizona Copper Estate, and this is one of a number of telegrams that have passed between myself and Mr. Dorsey and Mr. Brevillier.

(Reading:)

“Los Angeles, California, July 28, 1914.

Ben C. Hill, Tucson, Arizona.

You are authorized to appear for the Arizona Copper Estate in suit in United States Court against said

(Testimony of Samuel A. M. Syme.)

corporation so far as I have power to give such authority. The Arizona Copper Estate by Stephen W. Dorsey, President."

Now, I can bring up my whole correspondence file if counsel care to see it.

The COURT.—I will hold that sufficient. You may file that telegram if you do not object to it.

Mr. HILL.—I will state that this is in response to a telegram that I had sent to Mr. Dorsey at Los Angeles after my first telegram from him.

The examination in chief of Col. Syme was then resumed.

Dorsey gave directions to Mathews how to draw the [34] papers. We agreed that Mathews should draw the papers and Dorsey told Capt. Mathews to put in the name Arizona Copper Estate as grantee in one paper and grantor in the other. Prior thereto I had never had any dealings with nor heard of the Arizona Copper Estate. My dealings had been entirely with Dorsey. Notes aggregating \$100,000 were written out and signed by the Arizona Copper Estate by James Simmons, Vice-president.

(Papers shown witness.) These were the notes.

It was conceded by the defendant that no payment has been made on the notes.

Mr. NOBLE.—If the Court please, according to our pleadings these—we put these notes in the custody of the Court to follow whatever course the Court may determine in connection with this admission that they have not been paid.

(Testimony of Samuel A. M. Syme.)

The COURT.—Any objection?

Mr. BREVILLIER.—No, as I understand they are all offered in evidence.

The COURT.—They may be admitted with the privilege of withdrawing and substituting copies at such time as the Court may direct.

(The papers were marked by the Clerk Plaintiffs' Ex. "D-1," "D-2," "D-3," "D-4," "D-5," "D-6," "D-7," "D-8," "D-9," "D-10," "D-11," and "D-12," respectively.)

Mr. HEATH.—We claim under the pleadings and under the facts that these notes are void for non-payment. Therefore, we surrender them, in case your Honor agrees with us, for such disposition, to be returned to Mr. Dorsey or anybody else that your Honor may see fit to direct.

Col. SYME.—I sent the Plaintiffs' Exhibit "C" to be recorded. I never saw Senator Dorsey after August 3, 1899. Some of the notes that were executed on that date were delivered to me, some to Capt. Mathews and some to Col. Boyce. Those delivered to Col. Boyce were given simply as a commission for making a sale of this property. If [35] there was a sale he got that much commission out of the sale of the moneys we received. That is all the interest he had in it, it was only a commission; if the notes weren't paid Boyce was not to get anything. I never saw Col. Boyce afterwards. I never heard from the Copper Estate or its officers afterwards. Later, understanding that the whole thing had been abandoned, I saw William H. Reyn-

(Testimony of Samuel A. M. Syme.)

olds and made a proposition to him that he put up the money necessary to carry this thing through, get the title to it and sell it, and later he told me he would let me hear from him in a few days.

Mr. BREVILLIER.—I move to strike out the witness' statement that he understanding and I understanding that the whole thing had been abandoned. There is no connection of Mr. Reynolds shown with the transaction, and I object to it as a conclusion of the witness.

The COURT.—I sustain your motion to strike out that portion of this witness' last answer which states that he understanding, meaning Mr. Reynolds, that the whole thing had been abandoned.

Mr. BREVILLIER.—I take an exception to the denial of the motion in part.

To which ruling of the Court, the defendant, by its counsel, then and there duly excepted.

In my talk with William H. Reynolds he said he was sorry to lose the \$5,000 paid August 3, 1899. Williams H. Reynolds was either the father or grandfather of Philip K. Reynolds, who signed these papers as secretary.

The witness then testified under objection and exception as follows:

I think it was the fall of 1900, or thereabouts, as near as I can tell, I went to see William H. Reynolds in regard to the handling of this matter of Baca Float No. 3. [36] I had taken up the thing to handle it, try and do something with it, and I went to see William H. Reynolds and I interested Will-

(Testimony of Samuel A. M. Syme.)

iam H. Reynolds very much in it. I said to him that if he would come into the proposition and put up so much money, I would take him in, and he complained of losing \$5,000 or \$10,000. I said five, but that is impressed upon my memory, because he said once before only five and then afterwards ten, five or ten thousand dollars. He had already lost it and would like to have it back. "Well," I says, "Come in and put up some money and we will handle this and by that means you will get your money back." He told me he would go out for a while and see his lawyer, and that he would think about the matter and he would come back and see me that evening. He came back that afternoon, and I went back and saw Colonel Reynolds, and when he saw me he spoke to me and said, "Colonel, I am in a much better humor than I was when you were here to-day." I told him I was very glad to hear it, and he says, "I have been looking into this matter and looking into my bank account, and I have not made up my mind that I can draw on my bank account just at this time, but I will look farther into it, and if I find out I will then let you know what I will do in this case." Colonel Reynolds did not say anything at that time about the Arizona Copper Estate being the owner of the Baca Float No. 3 or having any [37] interest in it.

On Cross-examination by Mr. BREVILLIER.

Capt. Mathews was a lawyer, in active practice in 1899 and considered to be a very good lawyer. In connection with his professional practice he specu-

(Testimony of Samuel A. M. Syme.)

lated somewhat in real estate in a very conservative way, and bought and sold coal and other lands in West Virginia. In my opinion he had considerable familiarity with real estate and real estate transactions. I commenced negotiating with Senator Dorsey about three or four months before August, 1899, and signed a paper in the nature of an agreement to convey Baca Float No. 3 for substantially \$125,000. I do not say that I signed any contract or agreement that amounted to a contract or agreement, but I signed a paper. In that paper Mr. Boyce and I agreed to sell the Float for \$125,000. I called that agreement off after I made certain discoveries. Boyce told me that Dorsey had told him that \$25,000 would be paid as soon as I could get a communication from the Bouldins that they would sell their portion of the property to me for a certain amount. Dorsey denied making such a statement and afterwards Boyce acknowledged that Dorsey was correct. I also found that Boyce was reserving 10% of the property and, therefore, I repudiated the contract which Boyce and I had signed to sell the property to Dorsey. Before I went to New York I knew of the secretary's decision of July 25, 1899 (29L. D. 44) changing the location on the Float. The \$5,000 which passed in New York was in Dorsey's checks, one for \$2,000 to me, another for \$1,000 less the war stamps to Capt. Mathews, and other to Boyce for \$2,000. The notes were then and there divided between Mathews, Boyce and myself, Boyce receiving about \$25,000 in notes. I kept my notes.

(Testimony of Samuel A. M. Syme.)

Four of the notes produced by the plaintiffs were shown to the witness and he identified the endorsement of [38] Alexander F. Mathews which had been scratched out. The witness also identified his endorsement on the back of the notes made payable to him.

Col. SYME.—I did not discount them. The notes were sent on for collection and never paid. Capt. Mathews dictated the paper (Plaintiffs' Exhibit "C") which was given by the Copper Estate to Capt. Mathews and myself. It was filled out on a law blank. After it was recorded it was alternately in the possession of Captain Mathews and myself. Prior to 1899 I had been a clerk in the treasury department for about twenty-five years. Shortly after we went into Baca Float, I sent all those papers out to Mathews. You are talking about after this failed? Oh, after this failed that paper, I think, was almost entirely in my hands until I turned it over to the gentlemen that I sold the property to. I turned the paper over to Watts and Davis in 1906 together with all the other deeds and papers that I had, including the notes, and after the deed to Watts and Davis was signed.

Q. Well, you testified in Washington that the deed was made in 1907 and in 1906 you turned these papers over to them.

A. Oh, well, you have got me confused as to dates there, if I did. I can't tell you; I tell you now that I can't recollect exactly the dates

Q. Watts and Davis acted for you and Capt.

(Testimony of Samuel A. M. Syme.)

Mathews as attorneys in the year 1906.

Mr. NOBLE.—We are perfectly willing to state, if Mr. Brevillier will take our statement.

Mr. BREVILLIER.—Certainly.

Mr. NOBLE.—That the papers have been in the possession of Watts and Davis and ourselves as their counsel since on or about 1906 and 1907.

Between the 1899 transaction and the transaction with Watts and Davis I went first to William H. Reynolds and after I got through with Reynolds I had negotiations with my [39] son and Charles Douglas and some other gentlemen and turned the thing over to them. They were attorneys. I joined in with them to manipulate it and get the profits on it. I took down to their office a large lot of papers which they retained for some time, and when they concluded to drop the business I went down and got them again. I think Plaintiffs' Exhibit "C" was among those papers, but I do not know. Capt. Mathews read over Plaintiffs' Exhibit "C" after it was executed.

On Redirect Examination by Mr. NOBLE.

Capt. Mathews, as trustee, received \$20,000 of the notes. Capt. Mathews personally \$26,758, Col. Boyce, \$24,121, and I received \$29,121 of the notes. Of the \$5,000 of my individual money I gave \$1,000 of it to Capt. Mathews because he had been to a great deal of expense in this business and had done a lot of work. That \$1,000 was deducted from his original share of the notes. The same was done with reference to the \$2,000 to Boyce. Under the cir-

cumstances I thought that when we were getting \$100,000 for our interest in the Float we were getting a good price for it. I directed Senator Dorsey to give Mathews and Boyce checks for \$1,000 and \$2,000, respectively.

On Recross-examination by Mr. BREVILLIER.

It is stated in Plaintiffs' Exhibit "C" itself—I afterwards read it—but it was understood and stated there that the property would come back to us if the notes weren't paid in full, and Capt. Mathews stated that if the notes weren't paid that the property belonged to Mathews and myself.

On Redirect Examination by Mr. NOBLE.

Q. Mr. Brevillier asked you what was said at the meeting on August 3d as to what would happen if the notes weren't paid. Now, I would like you to say again just all that was said about that.

Mr. BREVILLIER.—I object. [40]

The COURT.—Objection overruled. Let him answer.

Mr. BREVILLIER.—Exception.

It was stated by Capt. Mathews or by me or by Senator Dorsey at the meeting of Aug. 3d, 1899, that if these notes weren't paid the whole thing amounted to nothing and it stood just as it did before, that the whole transaction would be null and void, including the notes and that the title would be in Mathews and myself if all the notes weren't paid and we would get the property.

On Recross-examination by Mr. BREVILLIER.

I have talked freely and frequently about that transaction with Mr. Noble and with Mr. Heath

(Testimony of Samuel A. M. Syme.)

and other counsel for the plaintiffs and they told me their opinions about it, some of them. They varied in my opinion about it. I had my opinion and I believe that was the best opinion in the whole lot.

I still have an interest in the property and Watts and Davis represent me and the Mathews Estate, and have ever since 1907.

By Mr. NOBLE.—I will state that the witness, if this property is ever sold or realized on, will get as a part of the purchase price for which he sold it to Watts and Davis, a substantial interest.

On Redirect Examination by Mr. NOBLE.

Q. I asked you yesterday, Colonel, about a conversation which you and Captain Mathews had, just after you left the office at 11 Broadway. Who were present at the conversation to which you referred? A. When we left the office of Dorsey?

Q. Yes, sir.

A. Mathews and myself went down on the elevator together, and we got outside the door—

Mr. BREVILLIER.—One moment.

Mr. NOBLE.—Q. Now, was Ex-Senator Dorsey present with you and Capt. Mathews at the time this conversation took place about which you referred yesterday? A. Yes, sir. [41]

Q. Now, then, you may state, if you please, what the conversation was.

A. The only conversation was that I asked—

Q. Excuse me, you had a conversation with Capt. Mathews in Mr. Dorsey's presence? A. Yes, sir.

(Testimony of Samuel A. M. Syme.)

Q. You may state what it was.

A. It hardly could be called a conversation. I just simply asked Captain Mathews what would be the nature of the case if these notes were never paid. He says the property will stand just as it did before, that is, the title in Mathews and myself.

Mr. BREVILLIER.—I move to strike out the testimony as incompetent, immaterial and irrelevant and as tending to vary, modify or contradict a written instrument and the legal import of that instrument.

The COURT.—The motion is denied.

Mr. BREVILLIER.—And I except.

To which ruling of the Court, the defendant by its counsel then and there duly excepted.

Mr. NOBLE.—Q. Did Senator Dorsey make any comment upon what Captain Mathews said?

A. None at all.

Neither Capt. Mathews or myself borrowed any money from the Copper Estate, nor from Senator Dorsey, Simmons nor Philip K. Reynolds.

The witness stated under objection of the defendant and exception, that neither he nor Capt. Mathews borrowed or loaned or owed any money to any of the persons or the corporation above named, and that neither Senator Dorsey nor the Copper Estate nor any of the persons named on that day owed any money to Mathews or Syme.

Q. You neither borrowed or loaned?

A. Oh, no, there was no money transaction of that kind.

(Testimony of Samuel A. M. Syme.)

(It is stipulated that no question of community property is involved.)

Col. SYME.—At the time of the meeting in August, 1899, Dorsey refused to give Boyce 10% of the stock of the Copper Estate, saying, “I will not break into that stock.” I had no [42] interest in that stock.

Recross-examination by Mr. BREVILLIER.

Col. SYME.—In my deposition taken herein at Washington I stated that no legal steps were ever taken to enforce payment of any of the notes or to sell the property and that we ignored the paper entirely, and that no steps were taken to sell the property in accordance with the law by foreclosure at public sale. My theory of the August, 1899, transaction is that if the notes weren't paid the control of the property would come back to us. That is what I meant for the property was already in our possession by the deed of reconveyance. (Plaintiff's Exhibit “C.”) I considered the paper a straight deed of reconveyance and not a mortgage. Probably if I were a lawyer I would know the difference between a deed and a mortgage but I do not, and I don't expect some lawyers exactly know. I sent the paper by express to be recorded. Capt. Mathews turned it over to me. I thought the control of the property would come back to us when the Copper Estate failed to pay the last note, and that up to that time they had the control of it and could have sold it. I never stopped to consider what would happen if the first notes were paid and

(Testimony of Samuel A. M. Syme.)

the others were not. I considered the paper in the nature of an option and that we conveyed the property to the Copper Estate and that it reconveyed it to us to secure the property to us if the notes weren't paid, so that we could get control of the property as we already had the property under the instrument of reconveyance. I understand that the paper (Plaintiffs' Exhibit "C") expresses the transaction as I understood it, because so far as I understand it, it states expressly that if the notes are not paid the title was back in Mathews and myself. I am no lawyer and probably might be fooled by a paper. Between 1899 and 1906 we had nothing to do with the property with the Land Department. I already had the property. How [43] should I think it would come back? The title was in us but the control for the time being limited by the notes to me and Mathews was out of us. In my deposition taken herein by the plaintiffs I testified that at the time I thought nothing about the particular date when the property would revert to us whether upon the failure to pay the last note or the first. I knew that the property was to come back to us and I knew it was coming in the course of time. When I use the words "come back" I mean control. There is a difference between coming back and control. Do you understand me? They had the control during the limit of the notes. The period of the notes was limited. They had control of the property, but the reconveyance was back to Mathews and myself of the property itself to be held by Dor-

(Testimony of Samuel A. M. Syme.)

sey during the period of the notes, you know, limited. I presume the last note—would presume the last note, if that was not paid, then the control came back and Dorsey had nothing more to do with the property, and everything was void, notes and all. Now, that was my understanding.

It was then stipulated by counsel that Baca Float No. 3 was segregated from the public domain by the filing of the plat of survey in December, 1914, and that the property now and at the time of the commencement of this action exceeded in value the jurisdictional amount.

The plaintiffs then read the deposition of Philip K. Reynolds taken by them on due notice which was in substance as follows:

[Deposition of Phillip Keep Reynolds.]

My name is Phillip Keep Reynolds, age thirty-six, residence, Brookline, Mass., occupation, assistant to president of the United Fruit Company. I have been with the Fruit Company in Boston since October 1, 1899. Prior to that time I was the secretary of my grandfather, Col. William H. Reynolds, of New York City, for fifteen months. My grandfather died Nov. 9, 1906. In August, 1899, he was [44] connected with the American Exploration Company. Its original office was No. 11 Broadway, and when my grandfather moved his office across the street to 32 Broadway that became its office also. My recollection is that he was the head and the leading spirit of that company. James Simmons was associated with him and the Exploration

(Testimoney of Dabney C. D. Davis, Jr.)

Company. Mr. Simmons died sometime ago. I knew Stephen W. Dorsey at that time. He knew my grandfather and they had business relations together and Dorsey visited the offices of the company. (Paper Plaintiff's Exhibit "C" shown witness.) The signatures of Philip K. Reynolds and of James Simmons to that paper are genuine, and the handwriting in the body of the paper is that of a young lady clerk, Miss May Crandall. The Arizona Copper Estate was organized by my grandfather, Col. Reynolds, to take over and develop the property known as Baca Float No. 3. As I recall, Mr. Dorsey assisted my grandfather in looking into this property. The proposition was brought into the office by Mr. Boyce. I think that Col. Reynolds was the president of the Copper Estate. I do not recall that Mr. Dorsey held any official position. Only a few meetings of the Copper Estate were held and those were of a routine character. It kept a minute book of the meetings that were held, and there was a stock certificate book. Only a few stock certificates were issued. To the best of my recollection, the only issue of shares was for the purpose of qualifying directors. The Copper estate had a seal, and during my connection with it I kept the records and the seal. When I left New York to come to Boston in 1899, I resigned and the minute book, the stock certificate book, and the seal were left in the office safe. I do not know what became of them afterwards, nor do I know where they are now. I think I recollect a meeting at 11 Broadway, New York, on August 3, 1899, at

(Testimony of Dabney C. D. Davis, Jr.)

which the paper (Plaintiff's Exhibit "C") was signed, and at which Senator Dorsey, James Simmons, [45] myself, a clerk and two other gentlemen were present, but I do not remember what occurred at that meeting in regard to the execution of the paper or recall any conversation that occurred there. I would not deny that at that meeting there was conversation as to the title of Baca Float No. 3 remaining in the two gentlemen. I did not name in case the payments were not made. (Photograph admitted to be that of Colonel S. A. M. Syme shown witness.) That gentleman called once at my grandfather's office after he had moved across Broadway as one of the persons then interested in Baca Float No. 3. I became Secretary of the Copper estate upon its organization about six months before I left New York in the fall of 1899. I had no personal interest in the Copper estate.

It is conceded herein that at the time of the commencement of this action the plaintiffs had possession of the property known as Baca Float No. 3 involved in this action, having taken actual possession shortly before the commencement of this suit.

**[Testimony of Dabney C. D. Davis, Jr., for
Plaintiffs.]**

DABNEY C. T. DAVIS, Jr., called as witness on behalf of the plaintiffs herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. NOBLE.

Q. Mr. Davis, you are one of the plaintiffs in this action, are you not? A. Yes, I am.

(Testimony of Dabney C. D. Davis, Jr.)

Q. On or about the 20th day of June, 1914, did you have an interview or talk with Senator Dorsey in Los Angeles, California? A. I did.

Q. I show you a paper and ask you if that paper was signed by Senator Dorsey in your presence .

A. It was.

Q. Had Senator Dorsey read it over before signing it? A. He had.

Mr. NOBLE.—That is all. [46]

I now offer the paper in evidence. (Plaintiffs' Exhibit "F.")

Mr. BREVILLIER.—I object to this as an *ex parte* affidavit that was procured before the commencement of this action, without any cross-examination or without the parties being represented by counsel in any way.

Mr. NOBLE.—We do not offer it as a deposition, if the Court please. We merely offer it as a statement signed by Mr. Dorsey without any reference to the fact that it is sworn to.

Mr. BREVILLIER.—If the Court, please, this purports to be an individual statement by Stephen W. Dorsey, and it does not purport to be a proper statement in any way. He discusses the legal effect of various papers in a conflicting way. Will your Honor read it?

The COURT.—No, not at this particular time.

Mr. BREVILLIER.—It was a statement that was taken *ex parte* before the commencement of this action, and it purports to be an individual statement of Mr. Dorsey.

(Testimoney of Dabney C. D. Davis, Jr.)

The COURT.—According to the evidence before the Court, it appears that Mr. Dorsey either owned or was in control of the corporation. It was his corporation, and the dealings that Mr. Syme and Mr. Mathews had with him were personal up to the time the conveyance was made. If you gentlemen are not employed by Mr. Dorsey, if the corporation has taken no action to employ you in this case, whom do you represent?

Mr. BREVILLIER.—The question is this, your Honor—

Mr. KINGAN.—Please answer the Court's question.

The COURT.—In all deference to the Court now, whom do you represent?

Mr. BREVILLIER.—We are here for the Copper Estate.

The COURT.—How did you get here?

Mr. BREVILLIER.—Under that authorization which Mr. Hill showed your Honor and which is in evidence. [47]

The Court will find that this paper discusses the legal effect of these papers. I do not think that there is anything in this paper that hurts us in the slightest degree.

Mr. NOBLE.—Then does it go in without your objection?

Mr. BREVILLIER.—We will consider that and let you know after recess whether or not we will withdraw our objection.

(Testimoney of Dabney C. D. Davis, Jr.)

Mr. KINGAN.—If the Court please, we want this passed on now.

The COURT.—I am not satisfied that you gentlemen have shown to the Court that you have authority to appear for this corporation.

Mr. BREVILLIER.—Well, there is that telegram which Mr. Hill offered yesterday.

The COURT.—You object to this because you say it is not on behalf of the corporation, and you are here in Court on telegram from a person who says that, so far as he is authorized, you may represent him.

Mr. HILL.—My objection to that, if your Honor please, is that it is simply an attempt to get before this Court the testimony of a man by an *ex parte* affidavit.

Mr. NOBLE.—Oh, no.

Mr. HILL.—That is what it amounts to.

Mr. KINGAN.—It is the same as a letter.

Mr. NOBLE.—Just the same as a letter written by Senator Dorsey.

The COURT.—Gentlemen, the question is now on the admission of this affidavit. Do you object to it?

Mr. BREVILLIER.—We consent to the admission of this paper as a declaration against interest.

Mr. BREVILLIER.—If the Court please, in both answers filed by the Copper Estate in this litigation, there was a statement made that the Copper Estate had conveyed its interest to A. M. Fowler. The original bill stated among other things that the mortgage or the transaction should be foreclosed. The

(Testimony of Dabney C. D. Davis, Jr.)

deed from the Copper Estate to A. M. Fowler was recorded [48] in Santa Cruz County at my request after the action was commenced. A. M. Fowler is my stenographer. I believe Mr. Heath knows that. At one time shortly after this answer was filed Mr. Heath came into my office and asked me whether in case it was desired that A. M. Fowler should be added as a party defendant in this litigation, it could be done. I told him I did not think there would be the slightest difficulty. Mr. Heath has furnished me from time to time in New York with the various papers in the Copper Estate case, and he has talked to me in a general way about it. The deed from the Copper Estate to A. M. Fowler was recorded in Santa Cruz County at my request. The record in that county states, "recorded at the request of G. H. Brevillier." I found the Copper Estate was duly incorporated. Mr. Davis and a gentleman who was acting for me last June went to Los Angeles on the same train. Mr. Davis saw Senator Dorsey before Doctor Root, who was with me in Tucson in June. Then James W. Vroom, President of the Santa Cruz Development Company, who is well acquainted with Senator Dorsey, wrote him and asked him if he would make a deed, if he would sell the land, and after some negotiations the Copper Estate, by Senator Dorsey as its president, made this deed, and received money for so doing.

Now, I asked Mr. Hill if he would appear here, and told him he would get authority from Senator Dorsey. Subsequently Senator Dorsey did send that tele-

(Deposition of Phillip Keep Reynolds.)

gram to Mr. Hill. I never met Senator Dorsey. I never talked to him in my life. As a matter of business policy I thought it advisable to get the deed from the Copper Estate. I found it was incorporated in Yuma County, and the evidence of Philip K. Reynolds bears that out. I have no connection with Philip K. Reynolds. I never saw him until the time of that deposition. I tried to get the papers from him. I offered to pay him for the papers, and he said he couldn't find them. I asked Mr. Heath if he would let me have copies of all [49] papers filed in the Copper Estate case, and he has always done so. Of course, A. M. Fowler holds this title, whatever she got, for the Santa Cruz Development Company. There is the whole thing. It has been thoroughly understood by the plaintiffs, and it has been done absolutely in the open.

Now, I am perfectly willing that A. M. Fowler be added as a party defendant in this litigation. I am perfectly willing that the Santa Cruz Development Company be added as a defendant and that all proceedings apply to it. I am perfectly willing, if they do not wish to do that, to furnish them with a paper, as soon as I can get it, that the decree herein shall bind them, as I look upon this action in effect as an action to foreclose a mortgage.

Mr. HEATH.—We believed from the beginning that Mr. Brevillier was engineering this Arizona Copper Estate business. As I told you in bringing suit we had satisfied ourselves as best we could that the Arizona Copper Estate had been dead from a

month or two after the transaction. We were, therefore, surprised when it came to life and we suspected the source. Mr. Brevillier never gave us any intimation that he had anything to do with it. When Mr. Hill was employed here, we suspected very strongly that he represented Mr. Brevillier, but it was never admitted. When Fowler's name appeared in the record, I went to Mr. Brevillier because I was considering whether it was necessary to make Fowler a party, and I asked Mr. Brevillier who Fowler was, and he declined to answer. I suspected the fact, so I was smiling, but he declined to answer. I happened to look in the adjoining room and I caught the eye of his stenographer, and she smiled, by which I inferred that she was laughing at my guess. I had no idea that she was the person. Then I asked him, thinking he controlled the situation, whether he thought there would be any objection if he wanted to make Fowler a party. He did say he thought there would not be, but he did not say that he represented [50] Fowler. He did not tell me who Fowler was, and although we have inquired of various persons, it was only when I read Vroom's answers to the interrogatories in the nature of discovery that I ascertained that Fowler is Secretary of the Santa Cruz Development Company and lives at Bloomfield, New Jersey, and it isn't even said there that she is Mr. Brevillier's stenographer.

Plaintiffs rested.

Defendants then introduced in evidence without objection Defendant's Exhibit No. 1, being a copy properly exemplified of proper Articles of Incorporation.

poration of the Arizona Copper Estate, recorded in the office of the County Recorder of Yuma County, Arizona, on February 28, 1899, in Book 2 of Bonds and Agreements, page 277, being the book then duly kept for the purpose of recording such articles of incorporation.

Defendants then introduced in evidence without objection Defendant's Exhibit No. 2, being proper proof of publication of the Articles of Incorporation of the Arizona Copper Estate in the Yuma "Sun," a newspaper published in Yuma, Arizona, on April 28, May 5, 12, 19 and 26, and June 2d, 1899.

The defendants then introduced in evidence, Defendants' Exhibit No. 4, a photographic copy, of the petition for rehearing presented in March, 1901, to the Department of the Interior, concededly signed by Alex. F. Mathews as Petitioner and by Conrad H. Syme as attorney, relating to Baca Float No. 3, and which so far as material reads as follows:

[Plaintiffs' Exhibit No. 4—Excerpts from Petition for Rehearing.]

"Shortly anterior to May 6. 1899, your petitioner being the owner of record of Baca Float No. 3, applied 'for the survey of said grant as selected or located in the Territory of Arizona, formerly a part of the Territory of New Mexico.' As no question had ever been [51] made of the legality of the allowance of said 'amended description,' and as your Department had previously expressly decided that it was bound by the location as described in said 'amened description,' your petitioner was not

heard thereupon, and the decision of July 25th, 1899, whereby the allowance of said 'amended description' was declared void, and of no legal effect, was made without your petitioner having an opportunity to present to the Commissioner of the General Land Office or the Secretary of the Interior, his reasons why said 'allowance was valid, legal and effective in law.' "

"Prior to July 25, 1899, your petitioner sold said property, taking notes for the consideration of the same, secured by a mortgage thereupon, upon which notes default has been made largely occasioned by the decision of July 25th, 1899; and your petitioner has only recently been in a position to protect his interest in the premises by this appeal to that 'supervisory authority' vested in the Secretary of the Interior and for the correction of an error in his decision of July 25th, 1899, which has occasioned great damage to your petitioner, and which he feels would not have occurred had he been given opportunity to present his reasons touching the validity in law of the allowance of said 'amended description' of said property by order of the Commissioner of the General Land Office of May 21st, 1866." [52]

Mr. BREVILLIER.—Of course, I do not suppose that the plaintiffs wish to make a claim that there was any other sale or conveyance by Mathews and Syme except in this Copper Estate transaction.

The COURT.—That must refer to that transac-

tion. The objection is overruled. It may be received. Conrad Syme is here and if plaintiffs want to show that it was some other transaction they may have the opportunity.

Mr. BREVILLIER.—If the Court please, we offer in evidence as an admission of plaintiffs against their interest, section 21 of the bill in this case as originally filed.

The COURT.—The Court will take notice of its own records. You may call my attention to it.

The defendant then introduced in evidence Defendant's Exhibit No. 5, an exemplified copy of the testimony of Dabney C. T. Davis, Jr., one of the plaintiffs herein, in another proceeding affecting the property at bar, and which testimony so far as material is as follows:

[Defendants' Exhibit No. 5—Excerpts from Testimony of Dabney C. D. Davis, Jr.]

With reference to the deed of February 8, 1907, (Plaintiff's Exhibit "A," heretofore offered in evidence) in this case, it was agreed between the parties that certain purchase money going to A. F. Mathews, subsequently becoming the interest of the heirs, should be represented by myself and General Watts as Trustees. General Watts and myself are also individually interested. I do not mean to say that they have a technical interest in the land itself, but when the trustees dispose of the property in question some of the proceeds from such sale or disposition would go to such parties.

Mr. BREVILLIER.—Will the plaintiffs concede that there has never been any foreclosure by action or

by any public sale, judicial or otherwise, of the instrument from the Copper Estate to Mathews and Syme, attached to the bill as exhibit No. 2? [53]

Mr. KINGAN.—We will admit, that there has been no foreclosure proceedings in Court, and that no action has been brought upon the notes, of any kind, and that is as far as we will admit.

Mr. BREVILLIER.—Will you also admit that the deed from the Mathews estate and Colonel Syme to Watts and Davis of February 8th, 1907, was not given as the result of a public sale? I mean by a public sale, an advertised sale, a sale on notice; a judicial sale, or any non-judicial sale on advertisement, or on notice to the Copper Estate, or any person in its behalf? Will you so concede?

Mr. KINGAN.—Yes.

Testimony Closed. [54]

Plaintiffs' Exhibits "D-1" to "D-12."

Plaintiffs' Exhibit "D-1" to "D-12," inclusive, consisted of twelve negotiable promissory notes, each dated August 3, 1899, signed by the Arizona Copper Estate by James Simmons, Vice-president, payable at 11 Broadway, New York City, for the following amounts and to the following payees:

Amount.	Payee.	Maturities.
\$5,351.60	Alex. F. Mathews	Feb. 15, 1900
5,351.60	"	July 15, 1900
5,351.60	"	Jan. 15, 1901
10,703.20	"	July 15, 1901
4,000.00	Alex. F. Mathews, Trustee for Miss Eldridge	Feb. 15, 1900
4,000.00	"	July 15, 1900

Amount.	Payee.	Maturities.
4,000.00	"	Jan. 15, 1901
8,000.00	"	July 15, 1901
5,824.20	S. A. M. Syme	Feb. 15, 1900
5,824.00	"	July 15, 1900
5,824.20	"	Jan. 15, 1901
11,648.40	"	July 15, 1901

\$75,879.00

[55]

[Stipulation as to Abstract of Testimony and Exhibits.]

The foregoing abstract of testimony and of certain exhibits is hereby approved as true, complete and properly prepared, and it is hereby stipulated that the same be filed and forthwith certified by the clerk as such in the transcript of record to be sent to the United States Circuit Court of Appeals for the Ninth Circuit on the appeal herein of the defendant, Arizona Copper Estate.

Notice of filing and of presentation to the Court or Judge for approval is hereby waived.

Dated June 11, 1915.

HARTWELL P. HEATH,
Solicitors for Plaintiffs.

BEN C. HILL,

Solicitor for Defendant, Arizona Copper Estate.

(In Pencil):

Mr. Heath's approval is subject to the signature of Mr. Kingan.

[Order Approving Abstract of Testimony and Exhibits.]

The foregoing abstract of testimony and of certain exhibits is hereby approved as true, complete and properly prepared.

Dated Sept. 3d, 1915.

WM. H. SAWTELLE,
Judge of the United States District Court for the
District of Arizona.

[Endorsements]: United States District Court,
District of Arizona. Cornelius C. Watts and Dab-
ney C. T. Davis, Jr., Plaintiffs, Against Arizona
Copper Estate et al., Defendants. Original Ap-
proved Abstract of Testimony and of Certain Ex-
hibits. Ben C. Hill, Solicitor for Arizona Copper
Estate, Tucson, Arizona. Filed Sept. 3, 1915.
George W. Lewis, Clerk. By Effie D. Botts, Deputy.
[56]

Decree.

*In the District Court of the United States in and for
the District of Arizona.*

IN EQUITY—E-4. (Tucson.)

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. TRUXTON BOYCE, URIEL
WRIGHT BOYCE, and U. LAWRENCE
JONES.

Defendants.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it is by the Court this 2d day of April, 1915, found:

That on or about August 3, 1899, Alexander F. Mathews and Samuel A. M. Syme executed and delivered a deed of conveyance of that date to the defendant, Arizona Copper Estate, of the following described tract of land situated in Santa Cruz County (formerly Pima County), Arizona, to wit:

Commencing at a point one mile and a half from the base of Salero Mountain in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles, thirty-six chains and forty-four links; thence south twelve miles, thirty-six chains and forty-four links; thence east twelve miles, thirty-six chains and forty-four links and thence north twelve miles, thirty-six chains and forty-four links to the place of beginning.

That, at the same time and as part of the same transaction, the defendant, Arizona Copper Estate, executed and delivered to said Alexander F. Mathews and Samuel A. M. Syme a paper writing bearing the same date by which it purported to reconvey said land to said Mathews and Syme with a proviso that, if certain notes of the Arizona Copper Estate therein recited aggregating \$100,000.00 and delivered therewith [57] were paid according to their tenor and effect, such conveyance should be void and the estate thereby created should cease,

determine and be void;

That said deed and said paper writing were recorder simultaneously in the office of the recorder of Pima County, Arizona, in Book 31 of Deeds of Real Estate at page 103, and in Book 15 of Mortgages at page 60, respectively, and said deed was thereafter duly recorded in the office of the recorder of Santa Cruz County, Arizona;

That the two recorded instruments aforesaid are to be construed as one instrument and constitute a conditional sale of the land hereinbefore described by said Mathews and Syme to the defendant, Arizona Copper Estate, for \$100,000.00, to be paid according to the tenor and effect of the notes hereinbefore referred to;

That the condition was not performed and that no part of said sum of one hundred thousand dollars has ever been paid;

That the defendant Arizona Copper Estate acquired and has no right, title, interest, or estate under or by virtue of the aforesaid instruments or either of them or otherwise, or in and to the land hereinbefore described, or any part thereof;

That the defendants, U. Lawrence Boyce, W. Truxton Boyce, Uriel Wright Boyce, and U. Lawrence Jones are all heirs of U. L. Boyce, deceased;

That the said U. L. Boyce, deceased, acquired, and defendants, U. Lawrence Boyce, W. Truxton Boyce, Uriel Wright Boyce, and U. Lawrence Jones have no right, title, interest or estate under or by virtue of the aforesaid instruments, or either of them, or otherwise, in or to the land hereinbefore [58] de-

scribed, or any part thereof;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the full legal title to the land hereinbefore described is in the plaintiffs; and it is further

ORDERED, ADJUDGED AND DECREED that the aforesaid recorded instruments, dated August 3, 1899, and recorded in the office of the recorder of Pima County, Arizona, in Book 15 of Mortgages at page 60 and Book 31 of Deeds of Real Estate at page 103, respectively, and the latter of which is also recorded in the office of the recorder of Santa Cruz County, Arizona, constitute a cloud upon the title of the plaintiffs herein to the land hereinbefore described; and it is further

ORDERED, ADJUDGED AND DECREED that the aforesaid instruments be and the same hereby removed as a cloud upon the title of the plaintiffs to the hereinbefore described land; and that the title of the plaintiffs to the land hereinbefore described be, and the same hereby is, quieted in the plaintiffs against the defendants Arizona Copper Estate, U. Lawrence Boyce, W. Truxton Boyce, Uriel Wright Boyce and U. Lawrence Jones, and each of them, and all persons claiming under them or any of them; and it is further

ORDERED, ADJUDGED AND DECREED that the defendants, Arizona Copper Estate, U. Lawrence Boyce, W. Truxton Boyce, Uriel Wright Boyce, and U. Lawrence Jones, and each and every one of them, and all persons claiming under them, or any of them, be barred and forever estopped from having or

claiming any right or title to the land hereinbefore described adverse to the plaintiffs; and it is further [59]

ORDERED, ADJUDGED AND DECREED that a certified copy of this decree be filed and recorded in the office of the recorder for Santa Cruz County, Arizona; and it is further

ORDERED, ADJUDGED AND DECREED that the plaintiffs have judgments for their costs and disbursements against the defendants; and it is further

ORDERED, ADJUDGED AND DECREED that the plaintiffs may have leave to apply at the foot of this decree for such other and further relief as may be proper.

WM. H. SAWTELLE,
Judge.

[Endorsements]: In Equity E-4 (Tucson). U. S. District Court, District of Arizona. Cornelius C. Watts, et al., Plaintiffs, vs. Arizona Copper Estate, et al., Defendants. Proposed Decree. S. L. Kingan and Hartwell P. Heath, Solicitors for Plaintiffs. Filed April 2, A. D., 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. [60]

**(Plaintiff's Exhibit "A"—Deed, February 8, 1907,
Syme et al. to Watts et al.)**

THIS DEED, Made this, the eighth day of February, 1907, between Samuel A. M. Syme, of the city of Washington, D. C., and Laura G. Mathews, Eliza Patton Mathews, Mason Mathews, Charles G. Mathews and Henry A. Mathews, devisees of Alexander F. Mathews, deceased, acting in their individual

capacity and the said Mason Mathews, Charles G. Mathews and Henry A. Mathews, acting in their capacity of executors of the will of Alexander F. Mathews, deceased, grantors, parties of the first part, and C. C. Watts and D. C. T. Davis, Jr., trustees, bith of Charleston, West Virginia, parties of the second part,

Witnesseth, that for and in consideration of the sum of Four thousand (\$4,000.) Dollars in money and other valuable considerations paid and to be paid by the parties of the second part to the parties of the first part, the receipt whereof is hereby acknowledged, the said parties of the first part have bargained, sold and do hereby grant and convey with covenants of special warranty unto the parties of the second part, their successors and assigns forever all that certain tract or parcel of land and all their right, title and interest, both legal and equitable therein, situate, lying and being in the Counties of Pima, Santa Cruz, in the territory of Arizona, known as Baca Float No. 3, and granted to the heirs of Luis Maria Baca, by the United States by act of Congress approved June 21, 1860, and afterwards conveyed by the said Bacco heirs to John S. Watts by deed bearing date the first day of May, 1864, and recorded May 14, 1864 in the Office of the Court of Pruebas of the County of Santa Fee, territory of New Mexico, in book "C" at pages in said book marked 551, 552, 553, 554 and 555, and also recorded in the office of the Court of Pruebas of the County of San Miguel, territory of New Mexico in the 3d book of documents at pages marked 51, 52, 53, 54, 55, 56,

57 and 58, August 24, 1866 and bounded and described as follows: [61]

Commencing at a point one mile and a half from the base of the Salero Mountain in a direction north 45 degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles 36 chains and 44 links, thence south 12 miles, 36 chains and 44 links, thence east 12 miles 36 chains and 44 links, thence north 12 miles 36 chains and 44 links to the place of beginning, containing 99,289 acres and $39/100$ of an acre more or less, the said tract of land being known as Bacco Float No. 3, including in this conveyance all the rights and claims of the heirs of the said Baca, and of all persons claiming under them, that is to say, all the right, title and interest of the said parties of the first part to said Baca Float No. 3 as above described or to any land located elsewhere in lieu thereof, under act of Congress approved on June 21, 1860, or under any decision of any department of the government made or hereafter to be made or act of Congress passed or to be passed.

This conveyance is made with the express power to the said parties of the second part to sell, convey, to lease, mortgage or otherwise dispose of the said Real Estate or any part thereof, as to them may seem best and the purchaser or purchasers in case of such sale shall not be required to see to the application or disposition of the purchase money and shall be held acquit of any responsibility.

It is further covenanted and agreed that the parties of the first part will give to the parties of the

second part such other and further deeds and assurances as in their judgment be necessary to carry into effect the provisions of this deed.

In witness whereof the parties hereto of the first part have hereunto set their hands and affixed their respective seals this 8th day of February, A. D., 1907.

Witness to S. A. M. Syme's signature.

A. GUMPERT,	
C. M. COLLINS,	
L. B. BATTLE,	
S. A. M. SYME,	(Seal.)
ELIZA PATTON MATHEWS,	(Seal.)
LAURA G. MATHEWS,	(Seal.)
MASON MATHEWS,	(Seal.)
MASON MATHEWS, Exr.	(Seal.)
C. G. MATHEWS,	(Seal.)
C. G. MATHEWS, Exr.	(Seal.)
HENRY A. MATHEWS,	(Seal.)
HENRY A. MATHEWS, Exr.	(Seal.)

[62]

District of Columbia,

County of Washington,—To wit:

I, F. J. Whitehead, a Notary Public in and for the District of Columbia, do hereby certify that this day personally appeared before me in the district aforesaid Samuel A. M. Syme personally known to me to be the same person described in and who executed the foregoing and annexed instrument in writing and duly acknowledged to me that he had executed the same for the uses and purposes therein mentioned and that the same was his free and voluntary act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal this 11th day of February, 1907.

[N. P. Seal.]

F. J. WHITEHEAD,
Notary Public, D. C.

State of West Va.,
County of Greenbrier,—ss.

I, W E. Nelson, a Notary Public in and for the County and State aforesaid, do hereby certify that this day personally appeared before me in the State and County aforesaid, Laura G. Mathews, Eliza Patton Mathews, Mason Mathews, Charles G. Mathews and Henry A. Mathews, personally known to me to be the same persons described in and who executed the foregoing and annexed instrument in writing and duly acknowledged to me, the last named three in their individual and also in their executorial capacity, that they had executed the same for the uses and purposes therein mentioned and that the same was their free and voluntary act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal this the 8th day of February, 1907.

[N. P. Seal.]

W. E. NELSON,
Notary Public. [63]

Filed and recorded at request of Noble, Esterbrook & McHarg, Mar. 20, A. D., 1914, at 4:15 P. M.

PHIL HEROLD,
County Recorder.

[Endorsements]: Plffs. Ex. "A." in E-4. Admitted and Filed March 25, 1915. George W. Lewis, Clerk. [64]

(Plaintiffs' Exhibit "B"—Deed, August 3, 1899, Mathews et al., to Arizona Copper Estate.)

THIS DEED, Made this third day of August, A. D., 1899, between Alexander F. Mathews of the town of Lewisburg, State of West Virginia, and S. A. M. Syme of the city of Washington, District of Columbia, parties of the first part and The Arizona Copper Estate, a corporation, organized under the laws of the territory of Arizona, party of the second part.

WITNESSETH, that the said parties of the first part have in consideration of the sum of Ten Dollars to them in hand paid by the party of the second part, before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged and other good and valuable considerations, have remised, released and quit claimed and by these presents do remise, release and quit claim unto the said party of the second part, its successors and assigns, all that certain tract or parcel of land situate in the southern part of the County of Pima and territory of Arizona, known as Baca Float No. 3 and more particularly described in the records of the United States Land Office and Surveyor General's Office at Tucson in the said territory of Arizona and in the United States General Land Office in the said city of Washington, District of Columbia, to which records reference is here made for such particular description and which tract contains 99,000 acres

more or less, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and all the estate, right title, interest, claim and demand of the said parties of the first part, of, in or to the above described premises and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above-named and described premises, together with the appurtenances unto the said party of the second part, its successors and assigns forever, and the said parties of the first part, for themselves, their heirs, executors and administrators, do hereby covenant, promise and agree to and with the said party of the second part, its [65] successors, and assigns, that the said premises against the claim of all persons claiming to claim by, through, or under them only, they will forever warrant and deed.

IN WITNESS WHEREOF the said parties of the first part have hereunto set their hands and seals this, the 3d day of August, A. D., 1899.

ALEX. F. MATHEWS. (Seal.)

S. A. M. SYME. (Seal.)

Witness: P. K. REYNOLDS.

(\$125.00 U. S. Int. Revenue Stamps.)

City of New York,

County and State of New York,—ss.

Before me, James Simmons, a Notary Public in and for the said County and State aforesaid, on this day personally appeared Alexander F. Mathews and S. A. M. Syme, personally known to me to be the persons described in and who executed the foregoing

instrument, and they and each of them acknowledged to me that they and each of them executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this the 3d day of August, A. D., 1899.

JAMES SIMMONS,
Notary Public.

My commission expires March 30, 1901.

Filed and recorded at request of Phillip K. Reynolds August 12, A. D. 1899, at 9 A. M.

CHAS. A. SHIBELL,
County Recorder.

Recorded Book 31 Deeds of Real Estate at page 103 et seq. Pima County, Arizona records. [66]

State of Arizona,
County of Pima,—ss.

I, P. E. Howell, County Recorder in and for the County of Pima, do hereby certify that the above and foregoing is a full, true and correct copy of the deed from Alexander F. Mathews and S. A. M. Syme, to the Arizona Copper Estate of date August 3, 1899, as appears of record now in my office in Book 31 Deeds of Real Estate, page 103 et seq.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in Tucson this 26th day of March, A. D. 1913.

[Seal]

P. E. HOWELL,
County Recorder of Pima County, Arizona.

Filed and recorded at the request of G. H. Brevillier July 20, 1914, at 9 A. M.

PHIL HEROLD,
County Recorder.

[Endorsements]: U. S. District Court, District of Arizona. No. E-4 (Tucson). Cornelius C. Watts, et al., vs. Arizona Copper Estate, et al. Incorporated at pages 93, et seq. of and as Exhibit No. 1 to Deposition of Samuel A. M. Syme Taken on Behalf of the Plaintiffs, October 12, 1914, at Washington, D. C., Before Wm. H. Harper, Notary Public. Alexander F. Mathews and S. A. M. Syme, to Arizona Copper Estate. Deed. Dated August 3, 1899. Fitch, Slater & Randall, Attorneys and Counselors at Law, 30 Broad St., New York. [67]

United States of America,
State of Arizona,
County of Santa Cruz,—ss.

I, Phil Herold, County Recorder in and for the County of Santa Cruz, Arizona, do hereby certify that the above and foregoing and attached paper, page 1 to 3 inc., is a full, true and correct copy of the deed from Alexander F. Mathews and S. A. M. Syme to Arizona Copper Estate, of date August 3, 1899, as appears of record now in my office in Book 7, Deeds Real Estate, Pages 625 et seq.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in Nogales, Arizona, this 3d day of Dec. 1914.

PHIL HEROLD,
County Recorder of Santa Cruz County, Arizona.

[Recorder's Seal.]

(Two Five Cent Revenue Stamps.)

United States of America,
State of Arizona,
County of Santa Cruz,—ss.

I, W. A. O'CONNOR, Judge of the Superior Court of the State of Arizona, in and for the County of Santa Cruz, do hereby certify that Phil Herold whose name is subscribed to the foregoing certificate of Attestation, now is and was at the time of signing and sealing the same, County Recorder of said County of Santa Cruz and keeper of the seal and records of said office, duly elected, commissioned and qualified to office; that full faith and credit are, and of a right ought to be given to all his official acts as such in all courts of record in the United States and elsewhere; and that his attestation is in due form of law and by the proper officer.

In witness whereof I have hereunto set my hand and affixed the seal of said Court at the City of Nogales, in said County of Santa Cruz and State of Arizona, this 3d day of December, 1914.

W. A. O'CONNOR,
Judge of the Superior Court of the State of Arizona,
in and for the County of Santa Cruz.

[Court Seal.] [68]

(Two Five Cent Revenue Stamps.)

United States of America,
State of Arizona,
County of Santa Cruz,—ss.

I, Edward L. Mix, Clerk of the Superior Court of the State of Arizona, in and for the County of Santa Cruz, do hereby certify that W. A. O'Connor whose

name is subscribed to the foregoing Certificate of Attestation, now is, and was at the time of signing and sealing the same, Judge of the Superior Court of the State of Arizona, in and for the County of Santa Cruz and was duly elected, commissioned and qualified to office; that full faith and credit are, and of right ought to be, given to all his official acts as such in all courts of record in the United States and elsewhere, and that his attestation is in due form of law and by the proper officer.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at the City of Nogales, in said County of Santa Cruz and State of Arizona, this 3d day of December, 1914.

EDW. L. MIX,

Clerk of the Superior Court of the State of Arizona
in and for the County of Santa Cruz.

[Seal of Court.]

(Two Five Cent Revenue Stamps.)

[Endorsements]: Plaintiff's Exhibit "B" in E-4. Admitted and filed March 25, 1915. George W. Lewis, Clerk.[69]

(Plaintiffs' Exhibit "C"—Indenture, August 3, 1899, Arizona Copper Estate and Mathews et al.)

THIS INDENTURE Made the third day of August in the year Eighteen Hundred and ninety-nine between The Arizona Copper Estate, a corporation organized and existing by virtue of the laws of the territory of Arizona, with an office in the city of New York, party of the first part and Alexander F. Mathews of Greenbrier County, West Virginia and

S. A. M. Syme of Alexandria, Virginia, parties of the second part;

WITNESSETH, That the said party of the first part in consideration of the sum of Ten (\$10.00) Dollars lawful money of the United States paid by the said parties of the second part, does hereby grant and release unto the said parties of the second part and to their representatives and assigns forever, all that certain tract or parcel of land situated in the Southern part of the County of Pima and territory of Arizona, known as Baca Float No. 3 and more particularly described in The records of the United States Land Office and Surveyor General's Office at Tuscon in the said territory of Arizona and in the United States General Land Office in the said city of Washington, District of Columbia, to which records reference is here made for such particular description and which tract contains ninety-nine thousand (99,000) acres more or less, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining and all the estate, right, title, interest, claim and demand of the said parties of the first part, of, in, or to the above described premises and every part and parcel thereof with the appurtenances, to have and to hold all and singular the above-named and described premises, together with the appurtenances unto the said party of the second part, its successors and assigns forever.

Whereas, the party of the first part has executed certain promissory notes aggregating the sum of One Hundred Thousand (\$100,000.) Dollars, payable

according to the terms and tenor thereof, to wit:
[70]

Three notes for \$4,824.20, three notes for \$5,351.60, three notes for \$5,824.20, and three notes for \$4,000 each, each of said sets of notes falling due respectively on February 15th, 1900, July 15th, 1900, January 15th, 1901, also one note for \$9,648.40, one for \$10,703.20 and one for \$11,648.40 and one for \$8,000, all of said notes being due and payable on the 15th day of July, 1901, all of the above-described notes having been executed to Alexander F. Mathews, S. A. M. Syme, U. L. Boyce and Alexander F. Mathews, trustee, respectively, as will fully appear on the face of said notes, together with the appurtenances and all the estate and rights of the said party of the first part in and to said premises.

(\$46.50
U. S. Int.
Revenue
Stamps.)

To have and to hold the above-granted premises unto the said parties of the second part, their heirs and assigns forever. Provided always that if said notes are paid according to their tenor and effect, then these presents shall become void and the estate hereby granted shall cease determine and be void, otherwise to remain in full force and effect and the said party of the first part covenants with the said parties of the second part that the party of the first part will pay the indebtedness as hereinbefore provided and if default be made in the payment of any part thereof the said parties of the second part shall have power to sell the premises herein described according to law.

In witness whereof the said party of the first part

has caused its President and Secretary to execute the foregoing indenture for and in behalf of the corporation and to attach the corporate seal hereto.

THE ARIZONA COPPER ESTATE (Seal)

By JAMES SIMMONS,

Vice-President.

[Seal]

PHILIP K. REYNOLDS,

Secretary. [71]

State of New York,

County of New York,—ss:

On this third day of August in the year Eighteen Hundred, before me, personally came James Simmons and Philip K. Reynolds, respectively Vice-president and Secretary of the Arizona Copper Estate, a corporation, to me known and known to me to be the individuals described in and who executed the foregoing indenture and they thereupon have acknowledged to me that they executed the same for and in behalf of said corporation in compliance with the order of its Board of Directors thereof for the purposes and considerations therein set forth.

[Seal]

SHERMAN W. FORD,

Notary Public No. 40 N. Y. Co.

Territory of Arizona,

County of Pima.

I hereby certify that the within instrument was filed and recorded Aug. 12, A. D. 1899, at 9 A. M. in Book 15 Mortgages at Page 60, 61, 62.

Witness my hand and Official Seal the day and year aforesaid.

CHAS. A. SHIBELL,

County Recorder.

[Endorsements]: Pltfs. Ex. "C" in E-4. Admitted and filed March 25, 1915. George W. Lewis, Clerk. [72]

(Plaintiffs Exhibit "S"—Affidavit of Stephen E. Dorsey.)

State of California,
County of Los Angeles,—ss.

Stephen E. Dorsey, being duly sworn says; I am now a resident of Los Angeles, California: in 1899 I was in New York City and there was induced by Col. U. L. Boyce, whom I had previously known in Washington, to consider the purchase of Baca Float No. 3: it was represented to me that those for whom Col. Boyce was acting could give a good title to the property; that it was a valuable property and could be handled profitably by a purchaser. I was somewhat familiar with conditions in Arizona and New Mexico and had reason to believe that what I was told about this property was in the main true. After some negotiations, I met Col. S. A. M. Syme, who told me that he was in a position to procure a deed to the property to be made to me or to any one I might designate. It was finally agreed that the purchase price of the property should be One Hundred Thousand (\$100,000.) Dollars, to be paid in various sums and at various times running over about two years. My plan was to form a corporation to which the property could be deeded and which could then raise on the property a sum sufficient to pay the purchase price. It was, therefore, arranged that the property should be deeded to the corporation, but as the sale was not to be made unless and until the price

was paid, it was arranged that the corporation would reconvey the property to the then owners subject to divestiture if the purchase price was paid as agreed.

I interested some of my friends in the matter, among them, Mr. James Simmons and Philip K. Reynolds, and we had the papers prepared for the organization under the laws of Arizona of a corporation under the name of The Arizona Copper Estate. On or about August 3rd, 1899, Alexander F. Mathews and Samuel A. M. Syme deeded the property to The Arizona Copper Estate, and the Arizona Copper Estate made a reconveyance of the property on the same day to the said Mathews and Syme, which recited that certain notes had [73] been executed by the Arizona Copper Estate to said Mathews and Syme and to Col. Boyce as the broker in the transaction, amounting in the aggregate to One Hundred Thousand (\$100,000) Dollars and providing that if said notes were paid the reconveyance was to be void, otherwise to be and remain in full force and effect.

This form was adopted as the simplest and the one which would enable the corporation to handle the property easiest in raising the money required. There was never any intention that in case the corporation should not be able to raise the money, it should be indebted to those named in the amount of the notes or in any amount. All the parties knew that the corporation was to be organized to handle this proposition and that it had and expected to have

no other assets but what it could make out of this property.

Soon after the deeds were made, I went to the Interior Department at Washington, D. C., to investigate the condition of the title to the Float. Before starting the corporation going, but after consulting fully with the attorney for the Land Office, found out that the title to the property was so complicated that nothing could be done with it in a commercial way and I then and there decided to abandon the whole transaction. I had already recorded the two deeds but I did not complete the organization of the corporation.

Nothing further was done in the matter by me or my associates and my understanding has always been and is now that the transaction on account of the failure of the Arizona Copper Estate to make the payments agreed on was as though it had never taken place and that Mathews and Syme had the title to the property free of any claim on the part of those who had proposed to organize the corporation or of the Arizona Copper Estate itself, as it could have no claim because it never in fact existed. The above statement is in accordance with my best recollection.

STEPHEN W. DORSEY. [74]

Subscribed and sworn to before me this 20th day of June, 1914.

My commission expires October 21, 1915.

[Seal]

MIRANDA W. OLDS,

Notary Public in and for Los Angeles County, State of California.

[Endorsements]: Pltfs. Ex. "F" in E-4. Admitted and Filed March 26, 1915. George W. Lewis, Clerk. [75]

(Notice of Appeal and Demand to Join in Application for Appeal.)

In the District Court of the United States in and for the District of Arizona.

IN EQUITY—E-4. (Tucson.)

CORNELIUS C. WATTS and DABNEY C. T. DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, U. LAWRENCE BOYCE, W. TRUXTON BOYCE, URIEL WRIGHT BOYCE, and U. LAWRENCE JONES,

Defendants.

To John B. Wright, Esq., Solicitor for Defendants, Boyce and Jones:—

You are hereby notified that the undersigned will apply to Hon. WILLIAM H. SAWTELLE, Judge of the United States District Court for the District of Arizona, in the courtroom of said Court at Tucson, Arizona, on May 7th, 1915, at 10 o'clock A. M. for an order allowing the Arizona Copper Estate to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree entered herein on April 2, 1915, when and where you may attend and join in said appeal, and the undersigned demands,

requests and notifies you to join in the application for such appeal.

Dated, Tucson, Arizona, May 6, 1915.

BEN C. HILL,
Solicitor for Arizona Copper Estate.

[Endorsements]: United States District Court, District of Arizona. Cornelius C. Watts and Dabney C. T. Davis, Jr., Plaintiffs, against Arizona Copper Estate, et al, Defendants. Original Notice to Other Defendants to Appeal, etc. Ben C. Hill, Solicitor for Defendant, Arizona Copper Estate, Tucson, Arizona, Due and Timely Service of a Copy of the Within Notice is Hereby Admitted. Dated May 6th, 1915. John B. Wright, Solicitor for Defendants, Boyce and Jones. Filed May 10, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk. [76]

[Petition for, and Order Allowing Appeal, etc.]

*In the District Court of the United States in and for
the District of Arizona.*

IN EQUITY—E-4. (Tucson.)

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. TRUXTON BOYCE, URIEL
WRIGHT BOYCE and U. LAWRENCE
JONES,

Defendants,

To the United States District Court for the District of Arizona:

The above-named defendant, Arizona Copper Estate, conceiving itself aggrieved by the decree entered on the 2d day of April, 1915, in the above-entitled case, and having given notice of its intention to appeal to the Solicitor for the other defendants, and said other defendants refusing to join in this appeal, hereby appeals from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that this its appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated May 6, 1915.

BEN C. HILL,

Solicitor for Defendant, Arizona Copper Estate.

And now, to wit, May 10, 1915, it is ORDERED that the foregoing appeal be allowed as prayed for upon giving bond in the sum of Two Hundred Fifty (\$250.00) Dollars for costs on appeal.

WILLIAM H. SAWTELLE,

District Judge. [77]

[Endorsements]: United States District Court, District of Arizona. Cornelius C. Watts and Dabney C. T. Davis, Jr., Plaintiff, Against Arizona Copper Estate et al., Defendants. Original Petition and Order Allowing Appeal. Ben C. Hill, Solicitor for defendant, Arizona Copper Estate, Tucson, Arizona. Filed May 10th, A. D. 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk. Service

of Copy Admitted May 6-15. S. L. Kingan, Attorney for Plaintiff. [78]

(Assignment of Errors.)

*In the District Court of the United States, in and for
the District of Arizona.*

IN EQUITY—E-4. (Tucson.)

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. TRUXTON BOYCE, URIEL
WRIGHT BOYCE and U. LAWRENCE
JONES,

Defendants,

The undersigned appellant hereby assigns the following errors in the rulings, decision and decree of the Court in the above-entitled case:

First. The Court erred in finding and decreeing that the deed of Conveyance from Alexander F. Mathews and Samuel A. M. Syme to Arizona Copper Estate and the instrument of reconveyance executed by Arizona Copper Estate to said Mathews and Syme recorded in the Recorder's Office of Pima County, Arizona, in Book 15 of Mortgages, page 60, and hereinafter referred to as the "reconveyance," are to be construed as one instrument and constitute a conditional sale of the land referred to therein.

Second. The Court erred in not finding and de-

creeing that said reconveyance was a mortgage.

Third. The Court erred in admitting and considering any testimony or evidence as to the meaning, construction or contemplated legal effect of the said reconveyance, or the intention of the parties with reference to said reconveyance or the \$100,000, of notes recited therein.

Fourth. The Court erred in admitting and considering the testimony of Samuel A. M. Syme to the effect that it was the understanding and intention of the parties to said reconveyance [79] that in case the \$100,000 of notes recited therein were not paid according to their tenor and effect, the land described in said reconveyance should be the property of the grantees therein; that the sale was not to be deemed made unless and until said notes and all of them were paid, and that in case said notes were not paid they, as well as said deed and reconveyance were to be void.

Fifth. The Court erred in finding and decreeing that said Arizona Copper Estate acquired no interest or estate to the land described in the decree under said deed and reconveyance, and that they constitute a cloud on plaintiff's title.

Sixth. The Court erred in finding and decreeing that the full legal title to said land was in the plaintiffs, and barring the defendants and their successors in interest from asserting any interest or title under said deed and reconveyance.

Seventh. The Court erred in not finding and decreeing that said reconveyance and the notes recited therein were barred by the Arizona Statutes of Limitation.

Eighth. The Court erred in not finding and decreeing that all relief of the plaintiffs was barred by the Arizona Statutes of Limitation.

Ninth. The Court erred in not dismissing the bill on the merits.

WHEREFORE, appellants pray that the decree be reversed and the Bill dismissed on the merits.

BEN C. HILL,
Solicitor for Arizona Copper Estate.

[Endorsements]: United States District Court, District of Arizona, Cornelius C. Watts and Dabney C. T. Davis, Jr., Plaintiffs, Against Arizona Copper Estate et al., Defendants. Original Assignments of Error. Filed May 10, A. D., 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk. Service of Copy Admitted May 6, 1915. S. L. Kingan, Atty. for Plaintiff. [80]

*In the District Court of the United States in and for
the District of Arizona.*

IN EQUITY—E-4. (Tucson.)

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. TRUXTON BOYCE, URIEL
WRIGHT BOYCE and U. LAWRENCE
JONES,

Defendants,

Undertaking on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That American Surety Company, a corporation, duly incorporated under and by virtue of the State of New York and authorized by its charter and by law to become sole surety on bonds and undertakings in the above-entitled court, is held and firmly bound unto Cornelius C. Watts and Dabney C. T. Davis, Jr., in the full and just sum of Two Hundred Fifty (\$250.00) Dollars, lawful money of the United States, to be paid to the said Cornelius C. Watts and Dabney C. T. Davis, Jr., their and each of their executors, administrators or assigns and for which payment the said American Surety Company binds itself by these presents:

IN WITNESS WHEREOF, the said American Surety Company of New York has caused these presents to be executed by its duly authorized attorney in fact and has caused these presents to be sealed with its seal on this eleventh day of May in the year of our Lord one thousand nine hundred and fifteen (1915).

Whereas in the District Court of the United States for the District of Arizona in a suit pending in said court between Cornelius C. Watts and Dabney C. T. Davis, Jr., as plaintiffs, and Arizona Copper Estate and others, defendants, a decree in favor of the plaintiffs was entered on the second day of April, 1915, and the said Arizona Copper Estate having been given due permission from said Court to appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit; [81] now, the condition of the above obligation is such that if the said

Arizona Copper Estate shall prosecute such appeal to effect and answer all damages and costs if it fails to make its appeal good, then the above obligation to be void, otherwise to remain in full force and virtue.

[Seal] AMERICAN SURETY COMPANY.

By HARRY E. HEIGHTON,
Resident Vice-president.

Attest: FRANCIS M. HARTMAN,
Resident Assistant Secretary.

Approved May 11, 1915.

WM. H. SAWTELLE,
Judge.

[Endorsements]: In the District Court of the United States in and for the District of Arizona. Cornelius C. Watts and C. T. Davis, Jr., Plaintiffs, vs. Arizona Copper Estate et al., Defendants. Undertaking on Appeal. In Equity—E-4. (Tucson). Filed May 12, A. D. 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk. [82]

(Praecipe for Transcript of Record on Appeal.)

United States District Court, District of Arizona.

IN EQUITY—E-4. (Tucson.)

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

ARIZONA COPPER ESTATE et al.,

Defendants,

To the Clerk of the United States District Court for
the District of Arizona.

You will please prepare a transcript of the record

in the above-entitled cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit under an appeal perfected to said Court in said cause and include in said transcript only the following proceedings, pleadings, papers and records to wit:

1. Plaintiffs' Bill, Excluding Exhibits Annexed Thereto.

2. First Amendment to Bill and Stipulation Therefor.

3. Second Amendment to Bill,

4. Third Amendment to Bill.

5. Amended Answer of Arizona Copper Estate.

6. Stipulation Filed September 22, 1914 That Amended Answer of Arizona Copper Estate be Taken as Answer to Amended Bill of Complaint.

7. Stipulation Filed February 20, 1915, as to Mathews and Syme.

8. Abstract of Testimony and of Certain Exhibits Therein Referred to.

9. Decree of Court, Dated April 2, 1915.

10. Plaintiff's Exhibit "A,"

11. " " "B,"

12. " " "C,"

13. " " "F,"

14. Notice by Arizona Copper Estate to Other Defendants to Appeal.

15. Petition and Order Allowing Arizona Copper Estate to Appeal.

16. Assignment of Errors.

17. Bond on Appeal with Approval.

18. Citation on Appeal with Proof of Service.

19. Praeceptum for Transcript of Record.

20. Order Enlarging Time to File Record.

21. Authorization of Arizona Copper Estate to Ben C. Hill, Filed May 10, 1915. [83]

You will prepare, certify and forward said transcript as required by law and the rules of this Court, and the rules of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

Dated June, 1915.

BEN C. HILL,

Solicitor for Defendant, Arizona Copper Estate.

The foregoing Praeceptum is approved. We shall not file any praecipe.

HARTWELL P. HEATH,

Solicitor for Plaintiffs.

[Endorsements]: United States District Court, District of Arizona. Cornelius C. Watts and Dabney C. T. Davis, Jr., Plaintiffs, against Arizona Copper Estate, et al., Defendants. Original Approved Praeceptum for Record on Appeal. Ben C. Hill, Solicitor for Arizona Copper Estate, Tucson, Arizona. Filed Sept. 16, 1915. George W. Lewis, Clerk. [84]

*In the District Court of the United States for the
District of Arizona.*

IN EQUITY—E-4. (Tucson.)

CORNELIUS C. WATTS, and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. TRUXTON BOYCE, URIEL
WRIGHT BOYCE, and U. LAWRENCE
JONES,

Defendants.

**Order Extending Time to (September 28, 1915 to)
File Record and Docket Appeal.**

It appearing to the Court that the Arizona Copper Estate, a corporation, was heretofore on the 10th day of May, 1915, allowed an appeal to the Circuit Court of Appeals at San Francisco, and that various orders have heretofore been made extending the time therefor to September 18th, 1915, and that it is impossible for such appeal to be perfected within the time heretofore allowed.

IT IS HEREBY ORDERED that the time within which the said defendant, Arizona Copper Estate, shall be required to file the record in the above-entitled case and docket the appeal therein with the Clerk of the Circuit Court of Appeals at San Francisco, California, be and the same is hereby extended to the 28th day of September, 1915.

Dated this 16th day of September, 1915.

WM. H. SAWTELLE,

Judge.

[Endorsements]: In the District Court of the United States for the District of Arizona. Cornelius C. Watts, and Dabney C. T. Davis, Jr., Plaintiffs, vs. The Arizona Copper Estate. U. Lawrence Boyce, W. Truxton Boyce, Uriel Wright Boyce and U. Lawrence Jones, Defendants. In Equity No. E-4 Tucson. Order Extending Time to File Record and Docket Appeal Until September 18th, 1915. Filed September 16th, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. [85]

**(Confirmation of Authority to Appear for Arizona
Copper Estate, etc.)**

Los Angeles, Cal., April 3, 1915.

Mr. BEN C. HILL,

Tucson, Arizona.

Dear Sir:

This will confirm the authority which we gave you by telegraph to appear for the undersigned corporation in an action in the United States District Court of Arizona, Watts & Davis, Plaintiff and the Arizona Copper Estate et al., Defendants, and to defend the action, and we also authorize you to appeal the case to the Circuit Court of Appeals, and to act for us therein, until the final determination of the case

and take all necessary steps therein.

THE ARIZONA COPPER ESTATE.

By STEPHEN W. DORSEY,

President.

WITNESS:

BREVILLIER.

[Endorsement]: Filed May 10, 1915. E-4,
Tucson. George W. Lewis, Clerk. [86]

(Certificate of Clerk U. S. District Court to
Transcript of Record.)

*In the United States District Court for the District
of Arizona.*

IN EQUITY—E-4. (Tucson.)

CORNELIUS C. WATTS, and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. TRUXTON BOYCE, URIEL
WRIGHT BOYCE, and U. LAWRENCE
JONES,

Defendants.

United States of America,
District of Arizona,—ss.

I, George W. Lewis, Clerk of the United States
District Court for the District of Arizona, do hereby
certify that the foregoing pages, number one to
eighty-six inclusive, constitute and are a true, com-
plete and correct copy of the record, pleadings and

proceedings had in the case of Cornelius C. Watts and Dabney C. T. Davis, Jr., Plaintiffs, vs. Arizona Copper Estate, U. Lawrence Boyce, W. Truxton Boyce, Uriel Wright Boyce, and U. Lawrence Jones, Defendants, No. E-4. (Tucson), as the same is called for in the Praecipe, a copy of which is made a part of this transcript, as the same remain on file and of record in said District Court, and I also annex and transmit herewith the Original Citation in said Action.

I further certify that the cost of preparing and certifying to said record amounts to the sum of \$47.10, and that the same has been paid in full by the Arizona Copper Estate.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States District Court for the District of Arizona, at Tucson, in said District, this [87] 25th day of September, in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States of America, the one hundred and forty.

[Seal]

GEORGE W. LEWIS,

Clerk United States District Court, District of
Arizona.

By EFFIE D. BOTTS,

Deputy Clerk. [88]

[Citation on Appeal (Original).]

*In the District Court of the United States in and
for the District of Arizona.*

IN EQUITY—E-4. (Tucson.)

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

against

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. TRUXTON BOYCE, URIEL
WRIGHT BOYCE and U. LAWRENCE
JONES,

Defendants,

United States of America,

To Cornelius C. Watts and Dabney C. T. Davis, Jr.,
Greeting:

You are hereby notified that in a certain case in Equity in the United States District Court in and for the District of Arizona, wherein Cornelius C. Watts and Dabney C. T. Davis, Jr., are complainants, and Arizona Copper Estate, U. Lawrence Boyce, W. Truxton Boyce, Uriel Wright Boyce and U. Lawrence Jones, are defendants, an appeal has been allowed the Arizona Copper Estate therein to the Circuit Court of Appeals for the Ninth Circuit. You are hereby cited and admonished to be in said Court at San Francisco thirty days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be cor-

rected and speedy justice done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. SAWTELLE, Judge of the United States District Court for the District of Arizona, this 11th day of May, A. D. 1915.

WM. H. SAWTELLE,
United States District Judge.

Service of the foregoing citation hereby acknowledged this 11th day of May, A. D., 1915, at Tucson, Arizona.

S. L. KINGAN,
Solicitor for CORNELIUS C. WATTS and DABNEY C. T. DAVIS, Jr. [89]

In the District Court of the United States in and for the District of Arizona. Cornelius C. Watts and C. T. Davis, Jr., Plaintiffs, vs. Arizona Copper Estate et al., Defendants. In Equity E-4 (Tucson.) Citation on Appeal. Filed May 12, A. D. 1915, at — M. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk.

[Endorsed]: No. 2663. United States Circuit Court of Appeals for the Ninth Circuit. Original Citation on Appeal. Filed Sep. 27, 1915. F. D. Monckton, Clerk.

*In the District Court of the United States in and
for the District of Arizona.*

IN EQUITY—E-4. (Tucson.)

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

against

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. TRUXTON BOYCE, URIEL
WRIGHT BOYCE and U. LAWRENCE
JONES,

Defendants,

**Order Extending to (July 10, 1915 to) File Record
and Docket Appeal.**

Upon reading the motion of Arizona Copper Estate, a corporation, praying that an order be entered granting it further time in which to file the record and docket the case in the Circuit Court of Appeals of San Francisco, California, under the order of appeal allowed on May 10th, 1915, and for good cause shown, and there being no objection thereto:

IT IS HEREBY ORDERED that the time within which said defendant, Arizona Copper Estate, shall be required to file the record in the above-entitled case and docket the case with the Clerk of the Circuit Court of Appeals at San Francisco, California, be and the same is hereby enlarged and extended to the tenth day of July, 1915.

Dated this 7th day of June, A. D. 1915.

WM. H. SAWTELLE,
Judge.

United States of America,
District of Arizona,—ss.

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify the above and foregoing to be a true, perfect and complete copy of an order extending time to file record and docket on appeal in the case of Cornelius C. Watts et al., vs. Arizona Copper Estate et al., No. E-4 (Tucson), as the same appears from the original on file and of record in this office.

WITNESS my hand and the seal of said court affixed hereto this 21st day of June, A. D. 1915.

[Seal]

GEORGE W. LEWIS,
Clerk.

By Effie D. Botts, . .
Deputy. [90]

In the United States District Court, District of Arizona. Cornelius C. Watts and Dabney C. T. Davis, Jr., Plaintiffs, vs. Arizona Copper Estate et al., Defendants. No. E-4 (Tucson). Order Extending Time to File Record.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to ——, to File Record Thereof and to Docket Case. Filed Jun. 23, 1915. F. D. Monckton, Clerk.

*In the District Court of the United States in and for
the District of Arizona.*

IN EQUITY—E-4. (Tucson.)

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. TRUXTON BOYCE, URIEL
WRIGHT BOYCE, and U. LAWRENCE
JONES,

Defendants.

**Order Extending Time to [September 4, 1915 to]
File Record and Docket Appeal.**

Upon reading the motion of Arizona Copper Estate, a corporation, praying that an order be entered granting it further time in which to file the record and docket the case in the Circuit Court of Appeals of San Francisco, California, under the order of appeal allowed on May 10th, 1915, and for good cause shown, and there being no objection thereto;

IT IS HEREBY ORDERED that the time within which said defendant, Arizona Copper Estate, shall be required to file the record in the above-entitled case and docket the case with the Clerk of the Circuit Court of Appeals of San Francisco, California, be and the same is hereby enlarged and extended to the fourth day of September, 1915.

Dated this 30th day of August, A. D. 1915.

WM. H. SAWTELLE,

Judge.

[Endorsements]: In the District Court of the United States in and for the District of Arizona. Cornelius C. Watts and Dabney C. T. Davis, Jr., Plaintiffs, vs. Arizona Copper Estate, U. Lawrence Boyce, W. Truxton Boyce, Uriel Wright Boyce and W. Lawrence Jones, Defendants. In Equity—E-4 (Tucson).

Order Extending the Time to File Record and Docket on Appeal. Filed Aug. 30th, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Ben. C. Hill, Attorney at Law, Tucson, Arizona. [91]

United States of America,
District of Arizona,—ss.

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify the above and foregoing to be a true, perfect and complete copy of an order extending the time of the Arizona Copper Estate to file record and docket on appeal in the case of Cornelius C. Watts et al., vs. Arizona Copper Estate et al., No. E-4 (Tucson), as the same appears from the original order on file and of record in my office at Tucson, Arizona.

WITNESS my hand and the seal of said Court affixed hereto at Prescott, Arizona, this 30th day of August, A. D. 1915.

[Seal]

GEORGE W. LEWIS,

Clerk.

By Effie D. Botts,

Deputy. [91½]

In the United States District Court, District of Arizona. No. E-4. Tucson. Cornelius C. Watts

and Dabney C. T. Davis, Jr., Plaintiffs, vs. Arizona Copper Estate, U. Lawrence Boyce, W. Truxton Boyce, Uriel Wright Boyce and U. Lawrence Jones, Defendants. Certified Copy of Order Extending Time.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to ——, to File Record Thereof and to Docket Case. Filed Sep. 2, 1915. F. D. Monckton, Clerk.

*In the District Court of the United States for the
District of Arizona.*

In Equity—E-4.—Tucson.

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

ARIZONA COPPER ESTATE, U. LAWRENCE
BOYCE, W. TRUXTON BOYCE, URIEL
WRIGHT BOYCE, and U. LAWRENCE
JONES,

Defendants.

**Order Extending Time to [September 18, 1915, to]
File Record and Docket Appeal.**

Upon reading the motion of Arizona Copper Estate, a corporation, praying that an order be entered granting it further time in which to file the record and docket the appeal in the Circuit Court of Appeals at San Francisco, California, under the order of ap-

peal allowed on May 10th, 1915, and the various orders heretofore made extending the time therefor to September 4th, 1915, and for good cause shown, and there being no objections thereto:

IT IS HEREBY ORDERED that the time within which the said defendant, Arizona Copper Estate, shall be required to file the record in the above-entitled case and docket the appeal therein with the Clerk of the Circuit Court of Appeals at San Francisco, California, be and the same is hereby extended to the 18th day of September, 1915.

Dated this 14th day of September, 1915.

WM. H. SAWTELLE,
Judge.

[Endorsements]: In the District Court of the United States for the District of Arizona, Cornelius C. Watts and Dabney C. T. Davis, Jr., Plaintiffs, vs. Arizona Copper Estate, U. Lawrence Boyce, W. Truxton Boyce, Uriel Wright Boyce and U. Lawrence Jones, Defendants. In Equity E-4 (Tucson). Order Extending Time to File Record and Docket Appeal. Filed September 14th, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. [92]

United States of America,
District of Arizona,—ss.

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify the foregoing to be a true, perfect and complete copy of the order extending the time to file record and docket appeal in the case of Cornelius C. Watts et al., plaintiffs, vs. Arizona Copper Estate et al., defendants, made on the 14th day of Septem-

ber, A. D. 1915, as the same appears from the original on file and record in the clerk's office at Tucson, Arizona.

WITNESS my hand and the seal of said court affixed hereto at Prescott, this 14th day of September, A. D., 1915.

[Seal]

GEORGE W. LEWIS,

Clerk.

By Effie D. Botts,

Deputy. [92½]

In the District Court of the United States, for the District of Arizona. Cornelius C. Watts and Dabney C. T. Davis, Jr., Plaintiffs, vs. Arizona Copper Estate, U. Lawrence Boyce, W. Truxton Boyce, Uriel Wright Boyce and U. Lawrence Jones, Defendants. In Equity E-4 Tucson. Certified Copy of Order Extending Time to File Record and Docket Appeal.

[Endorsed]: No. ——. United States Circuit Court of Appeals, for the Ninth Circuit. Certified Copy of Order Under Rule 16 Enlarging time to Sept. 18, 1915, to File Record Thereof and to Docket Case. Filed Sep. 6, 1915. F. D. Monckton, Clerk.

[Endorsed]: No. 2663. United States Circuit Court of Appeals, for the Ninth Circuit. Certified Copy of Orders Under Rule 16 Enlarging Time to Sept. 18, 1915, to File Record Thereof and to Docket Case. Refiled Sep. 27, 1915. F. D. Monckton, Clerk. [93]

[Endorsed]: No. 2663. United States Circuit Court of Appeals for the Ninth Circuit. Arizona Copper Estate, a Corporation, Appellant, vs. Cornelius C. Watts and Dabney C. T. Davis, Jr., Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Filed September 27, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals,
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

